21.2.2024
15
Ct. no. 652
sb

C.O. 1361 of 2021

Kanak Kumar Nath
Vs.
Sri Ashim Kanti Kumar & ors.

Mr. Sounak Bhattacharya
Mr. Sounak Mondal
Mr. Abhirup Halder ...for the Petitioner

Mr. Partha Pratim Roy
Ms. Madhushri Dutta
Mr. Tuhin Subhra Basu
Mr. S. Dutta ...for the Opposite party nos. 1, 3, 4 & 5

The petitioner herein as preemptor filed an application for preemption under Section 8 of the West Bengal Land Reforms Act against opposite party no. 1 seeking preemption of the suit property on the ground of vicinage. The petitioner further submits that during pendency of the aforesaid Misc. case, opposite party no. 1 had transferred the suit property to the opposite party nos. 3,4 & 5. As petitioner was not agreeable with the consideration price shown in the impugned deed, he deposited only Rs. 38,500/- along with pre-emption application, but the Trial Judge directed the petitioner to deposit the balance consideration amount as a last chance on 23.09.2008. Since the petitioner failed to comply with the aforesaid order, learned Trial Judge by an order dated 23rd September, 2008 was pleased to dismiss the said Misc. Pre-emption Case for non-compliance of court's order.

Being aggrieved and dissatisfied with the said order, petitioner herein preferred an appeal being Misc. appeal no. 3 of 2009 and the learned appellate court by an order dated 20th September, 2011 was pleased to allow the said appeal and thereby set aside the order dated 23.9.2008 and remanded the case record to the learned Trial court for disposal on merit on condition that the petitioner shall deposit the balance consideration amount within 30th January, 2012.

The petitioner further submits that pursuant to the said order, the challan in triplicate was filed before the learned trial court amounting to Rs. 1,59,500/- and the learned trial judge by an order dated 30th January, 2012 was pleased to record that the said challan is taken on record.

The petitioner further submits that though the challans in triplicate was filed but since the case record was not received by the Trial court from the Appellate court, said Misc. case was adjourned from time to time. Ultimately, on 9.9.2013 the Trial Court by an order dated 8.11.2018, was pleased to reject the petitioner's prayer for further extension of time to file original challan showing deposit. The petitioner filed the challan and hearing of the main case was fixed on 1.4.2015.

Being aggrieved by that order, the opposite party no. 1 preferred revisional application before this court being C.O. no. 2625 of 2015 and a coordinate bench of this court by an order dated 17.2.2016 was pleased to dispose of the said Revisional Application observing, if the balance consideration amount is shown to have deposited within 30th January, 2012, learned trial court shall proceed to hear the pending applications and shall dispose of the said applications.

In terms of the aforesaid order dated 17.2.2016 passed by this court, the Trial Judge had taken up said Pre-emption case for hearing and by an order dated 10.11.2016, the Trial court was pleased to dismiss the Misc. case for non-compliance of court's order.

Thereafter, the petitioner filed an application for restoration under Section 94 of the Code of Civil Procedure which was also rejected by the trial court by an order dated 19.12.2019. The petitioner thereafter filed an application for review under Order 47 Rule 1 of the Code seeking reconsideration of the order dated 10.11.2016 passed by the learned Trial Judge but learned Trial judge by the order impugned dated 18.2.2021 was pleased to reject the said application under Order 47 rule 1 of the Code.

Being aggrieved by that order, learned counsel appearing for the petitioner submits that the court below had acted illegally and with material irregularity in passing the order impugned. The Trial court failed to appreciate that after remand by the learned appellate court, the record of the Misc. case no. 24 of 2005 were received by the learned trial court only on 7.2.2013 and as such the petitioner did not have any chance to file the original challan showing deposit before the learned Trial court within 30th January, 2012. The learned Trial Judge in exercise of his jurisdiction, had acted illegally by rejecting the applications under Section 94 as well as under order 47 Rule 1 of the Code. Accordingly, he has prayed for setting aside the order impugned.

Learned counsel for the opposite parties raised vehement objection contending that filing of challan in triplicate before court below for passing the same on 30.1.2012 does not amount to compliance of appellate court's order dated 20.9.2011. If he had intention to deposit the amount, he could have deposited on a skeleton file and as such there is nothing impropriety in the orders impugned.

He also referred the judgment of the Apex court in **Barasat Eye Hospital and others Vs. Kaustav Mondal reported in 2019 (9) SCC 767** and **Abdul Matin Mallick Vs. Subrata Bhattacharya reported in (2022) 7 SCC 147**. In this context, he also referred the judgment of a coordinate bench of this court passed in **Smt. Santana Sengupta (Gupta) Vs. Bidyasagar Mondal & ors. being C.O. 1014 of 2018** and contended that the observation of the Apex Court in the ***Barasat Eye Hospital & others case*** *(supra)* has its restrospective effect and as such the order impugned is absolutely justified and in accordance with the law and as such it does not call for interference.

I have considered the submissions made by both the parties. In view of the judgment passed by the Apex court in the case of ***Barasat Eye Hospital & others*** *(Supra)* it is no longer *res integra* that once the time period to exercise pre-emptor's right is sacrosanct then the deposit of the full amount within the time is also sacrosanct and it cannot be said that a discretion can be left to the preemptor to deposit whatever amount in his opinion is the appropriate consideration, in order to exercise a right of preemption. In fact, the preemptor has to deposit the entire consideration amount which is the pre-requisite to even endeavour to exercise this weak right and unless the amount of sale consideration along with 10% levy on the consideration amount, is deposited, the application under Section 8(1) of the Act of 1955 will not be triggered off.

In fact observation of the Apex Court in ***Barasat Eye Hospital & others*** *(Supra)* is not a new law made by the Court but this is only discovery and finding the correct interpretation of law. In **Assistant Commissioner, Income Tax Rajkot Vs. Saurashtra Kutch Stock Exchange Ltd, reported in (2008) 14**

SCC 171, the Hon'ble Apex court held, where an earlier decision of the court operated for quite some time, the decision rendered later on would have retrospective effect clarifying the legal position which was earlier not correctly understood.

Accordingly, it is clear that even in the event where the pre-emptor raises any doubt regarding the actual consideration amount and even if he has filed an application for enquiry under Section 9 of the Act of 1955, the payment of full consideration amount along with 10% levy is a pre-condition to file an application under Section 8(1) of the Act. Such observation of the Apex Court in ***Barasat Eye Hospital & others*** *(Supra)* has also been followed in the subsequent judgments including ***Abdul Matin Mallick (supra).***

In view of the aforesaid facts and circumstance of the case, since in the present context, the pre-emptor has not admittedly deposited the entire consideration amount appearing in the deed along with 10% levy while filing the application, under Section 8 of the Act of 1955, I find no merit in the present application.

In such view of the matter, C.O. 1361 of 2021 is dismissed.

Urgent photostat certified copy of this order, if applied for, be given to the parties upon compliance of all requisite formalities.

(Ajoy Kumar Mukherjee, J.)