

Court No. 2
26.6.2024
(Item No. 7)
(AB)

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side
W.P.A. 15865 of 2024

Sufia Khatun
VS
The State of West Bengal & Ors.

Mr. S. P. Pahari
Mr. Tapan Kumar Mahapatra
.... For the petitioner
Mr. Vimal Kumar Shahi
Ms. Sangeeta Roy
.....For the State

Mr. Srijan Nayak
Mr. Ankit Sureka
Mr. Biplab Das
.... For respondent Nos. 2 & 3

Affidavit of service filed in Court today, is taken on record.

Mr. S. P. Pahari, learned advocate appears for the petitioner.

Mr. Vimal Kumar Shahi, learned State advocate appears for respondent No. 1.

Mr. Srijan Nayak, learned advocate appears for respondent Nos. 2 and 3.

Rests of the respondents, including the relevant Co-operative Society, are not represented.

Drawing to an award dated **April 3, 2018, annexure P-1** at **page 11** to the writ petition learned counsel for the petitioner submits that, the petitioner is the award holder and certain amount was adjudicated to be refunded to the petitioner by the Co-operative Society. The default had been committed. Under the award a sum of **Rs.1,04,803/-** only was

paid but the balance awarded amount for a sum of **Rs.1,39,531/-** was not paid and the rest of the direction made in the award was not carried out and complied with. Thus default committed under the award.

The petitioner in exercise of statutory provision filed an execution case before the Executing Authority under the statute. From time to time orders were passed, **annexure P-2** at **page 13** onwards to the writ petition.

On **March 20, 2020** directions were made upon the respondent No. 3 to locate the debtor Co-operative Society. The record does not show what was the subsequent development thereto, whether the direction of the Executing Forum was carried out or not.

Finally on **July 29, 2021** the Execution Case was dropped as no whereabouts of the debtor Co-operative Society could be traced out.

After considering the submissions made on behalf of the parties and upon perusal of the materials on records this Court is of the view that, the amount crystallized under the said award and the directions made there under except the portion which has been complied with under the award, are left outstanding to be paid and carried out by the debtor Co-operative Society. The Executing Forum while dropping the

Execution Case should have granted further opportunities to the respective parties to execute the award in accordance with law. The moment the Execution Case is dropped, in the manner as mentioned in the impugned order dated **July 29, 2021** appearing at **page 14** to the writ petition, the right of the petitioner created under the award stands closed. The petitioner became non-suited. This ought not to have been done without making any further attempts to execute the award in accordance with law.

For the foregoing reasons the impugned order dated **July 29, 2021** passed by the respondent No. 6 stands **set aside** and **quashed**.

The Execution case is restored to its file with original number.

The respondent No. 6 shall deal with and dispose of the said execution proceeding and shall come to its logical conclusion thereupon strictly in accordance with law but positively within a period of **three months** from the date of communication of this order.

The respondent Nos. 2 and 3 being the statutory authority shall also ensure that, the direction of this Court is carried out and complied with in accordance with law.

Since affidavits are not called for, the allegations made in this writ petition are deemed not to have been admitted by the respondents.

It is made clear that, this Court has not gone into the merits of the Execution Case in any manner and the Executing Authority shall proceed with its independent mind but strictly in accordance with law.

On the above terms, this writ petition **W.P.A 15865 of 2024** stands **disposed of**, without any order as to costs.

Urgent certified photo copy of this order, if applied for, be supplied to the parties expeditiously on compliance of usual legal formalities.

(Aniruddha Roy, J.)