

Ct.
No.
237

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2024

C.O. 2641 of 2018
Sri Subal Chandra Saha, Since Deceased,
Rep. by Shibnath Saha & Ors.
-Versus-
Smt. Shiba Debi

Mr. Indranath Mukherjee ...For the Petitioners

Mr. Swarup Banerjee
Mr. Sajal Kumar Ghosh
Mr. Arindom Chatterjee
Mr. Arinjoy Pal
Mr. Subham Biswas ...For the Opposite Party

Being aggrieved by and dis-satisfied with the order
No. 66 dated 27th June, 2018 passed by the learned Civil
Judge (Junior Division), Barrackpore, in Misc. Case N o. 52
of 2014, the present application has been preferred.

The background of the present case is that the
decree-holder/plaintiff/opposite party herein obtained decree
in Title Suit No. 152 of 1998 and thereby she filed Title
Execution Case No. 44 of 2012 in order to execute the
decree. In the said execution proceeding, the petitioner
herein/judgment-debtor preferred an application under
section 47 of the Code of Civil Procedure, which was
registered as Misc. Case No. 7 of 2017, on the ground that
the description of the decretal property is not sufficient to
identify and also on the ground of unspecified character of
the decretal property and as such the decree is not
executable.

The main grievance ventilated in the present
application is that keeping the said Misc. case filed under

Section 47 of the Code pending, the Court below proceeded with the aforesaid execution case and by the order impugned was pleased to allow the decree-holder's prayer for executing the decree through police help and as such directed the police concerned to file estimate by the next date.

Mr. Indranath Mukherjee, learned Counsel appearing on behalf of the petitioners submits that unless the application under section 47 of the Code filed by the judgment-debtor is disposed of, the Court below cannot proceed with the execution case.

Mr. Swarup Banerjee, learned Counsel appearing on behalf of the opposite party submits that the said proceeding filed under section 47 of the Code is meritless and also barred by *res judicata* and the Court below was justified in proceeding with the execution case ignoring the allegations leveled in the Misc. Case filed under section 47 of the Code.

In this context, he relied upon an unreported decision of the Apex Court in the case of Pradeep Mehra Vs. Harijivan J. Jethwa (Since Deceased Thr. Lrd.) & Ors. passed in Civil Appeal No. 6375 of 2023 on 30th October, 2023.

I have considered the submissions made on behalf

of the parties. On perusal of the copy of the order sheets it appears that on 21st January, 2017, the judgment-debtor/petitioners herein filed the aforesaid application under section 47 of the Code and it was registered as Misc. Case No. 7 of 2017. Thereafter it further appears that several dates were fixed for disposal of the said application but the said Misc. Case has not been disposed of till now.

In such view of the fact, the present application, being C.O. 2641 of 2018 is hereby disposed of directing the Court below to dispose of the judgment-debtor's application under section 47 of the Code, being Misc. Case No. 7 of 2017 without being influenced by any observation made herein, within a period of four weeks from the date of communication of this order and thereafter on the fate of such disposal to proceed further, if any.

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

(Ajoy Kumar Mukherjee, J.)