

IN THE HIGH COURT AT CALCUTTA
CIVIL REVISIONAL JURISDICTION
APPELLATE SIDE

CO 2282 of 2022

Monira Begum & Ors.
Vs.
Sk. Arif Ali

Mr. Abhijit Ray
Mr. Md. Hossain
Mr. Santu Nandy
... For the petitioners

Mr. Uttam Kumar De
Ms. Writ De
Ms. Riya De
... For the opposite party

1. This revisional application has been filed assailing the order dated 20th July, 2022 passed by the learned Judge, 3rd Bench, Presidency Small Causes Court at Calcutta in connection with Ejectment Execution Case No.31 of 2020 arising out of Ejectment Suit No.170 of 2015 wherein the learned Executing Court refused an application for restoration of possession in favour of the petitioners who were dispossessed by way of execution of a decree with police help under Order XXI Rule 97 of the Code of Civil Procedure.

2. Learned counsel appearing on behalf of the petitioners has submitted that the judgment and decree passed in Ejectment Suit No.170 of 2015 was assailed in appeal, being Title Appeal No.15 of 2020 before the learned Chief Judge, City Civil Court at Calcutta.

3. It is further submitted on behalf of the petitioners that one of the appellants – Sk. Jahangir Ali – died on 20th July, 2020 and his legal heirs i.e., petitioners herein, were substituted in the appeal on 19th October, 2020.

4. Learned counsel appearing on behalf of the petitioners has again submitted that after the substitution in the appeal, decree was executed on 7th July, 2022 and the petitioners were dispossessed.

5. Learned counsel appearing on behalf of the petitioners has also submitted that the factum of substitution was within the knowledge of the opposite party/decreed-holder prior to execution of the decree as he has filed recalling application of the order of substitution in the appeal after entering appearance on 3rd March, 2021.

6. Per contra, learned counsel appearing on behalf of the opposite party has submitted that in the appeal, substitution was made before issuing notice upon the decreed-holder/respondent prior to substitution of the legal heirs of Sk. Jahangir Ali. Learned counsel has supported the order passed by the learned Executing Court to the effect that restoration of possession can only be resorted to in view of the separate provisions of law.

7. Considering all facts and circumstances, I find that after execution of the decree, the petitioners have no right to restore the possession by filing an application only

while the appeal is pending before the learned Chief Judge, City Civil Court at Calcutta. In those circumstances, the learned Trial Court has rightly observed that the Executing Court, being *functus officio*, cannot entertain any application for restoration of possession when the decree was executed in full satisfaction.

8. Regard being had to the above, I have hardly any scope to interfere with the order impugned in this revisional application.

9. Accordingly, the revisional application stands dismissed.

10. Interim order, if there be any, stands vacated.

11. All parties shall act on the basis of a server copy of this order duly downloaded from the official website of this Court.

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

(Bibhas Ranjan De, J.)