

18.4.2024
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Ct. no. 652
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CO 3820 of 2019

Sri Debjit Pal
Vs.
Sri P. Chiranjivi Rao

Mr. Subrata Ghosh ...for the Petitioner

Mr. Sukanta Das ..for the Opposite party

The petitioner herein filed an application under Sections 8 and 9 of the West Bengal Land Reforms Act, 1955 praying for an order of preemption of the property described in the schedule of said property being J. Misc. case no. 7 of 2011. When the said case was called on for hearing on 16th March, 2013, the petitioner was not represented and for which the application for pre-emption was dismissed for default. Thereafter, the petitioner filed J. Misc. case no. 13 of 2013 under Order IX rule 9 of the Code, for restoration of the said preemption case no. 7 of 2011 to its original file with original number, after setting aside the order of dismissal dated 16.3.2013. The opposite party herein contested the said Misc. case being no. 7 of 2011 and the learned court below by an order dated 27th November, 2015, dismissed the said Misc. case no. 13 of 2013 on the ground that the petitioner could not satisfy the court regarding his non-appearance on the

aforesaid date when the matter was called on for hearing.

Being aggrieved by that order, the petitioner preferred revisional application before this Court being C.O. 4489 of 2016 and this court vide order dated 13th February, 2019 was pleased to set aside the impugned order no. 56 dated 27.11.2015 subject to payment of cost of Rs. 10,000/- to the Opposite party/Respondent.

The petitioner submits that he received certified copy of the aforesaid order of this court on 4th March, 2019 and thereafter on 5th March, 2019 he sent a letter to the opposite party for furnishing bank details for making aforesaid payment of Rs. 10,000/-. Petitioner's further case is that the office of the Trial Court, received order of this Court dated 13.2.2019 on 08.5.2019 and next date was fixed on 13.6.2019. Despite receipt of that letter, the petitioner immediately did not furnish the bank details but thereafter on 13th June, 2019, opposite party herein filed one photocopy of leaf of bank passbook of his wife namely Pushpa Lata by firsti before the court below.

The petitioner received the same on 13.6.2019 but due to cease work in the court below, he could not take proper step on the scheduled date i.e. on 13.7.2019. The cease work continued from 01.7.2019 to 28.7.2019.

The court below by the impugned order, refused to restore the preemption Misc. case in its original file on the ground, that as per order of the High Court, the cost of Rs. 10,000/- had not been paid by the petitioner to the opposite party within the stipulated period and petitioner lacked the bona fides in not complying the order of this High Court.

Being aggrieved by that order, the petitioner herein submits that the court below committed serious error of law and acted with material irregularity and illegality in not allowing the petitioner's prayer for restoration of the preemption case. Learned court below ought to have considered that sufficient causes prevented him from not depositing the cost amount to the opposite party within the period prescribed by the court. Accordingly, he has prayed for setting aside the order impugned and for restoration of the original preemption case being J. Misc. case no. 7 of 2011 in its original file.

Mr. Das, learned counsel for the opposite party raised objection contending that there was intentional laches on the part of the petitioner in not depositing cost amount before the court below in spite of the fact that the opposite party herein furnished the bank details to the opposite party on 13.6.2019. He further submits that the petitioner is not at all diligent in proceeding with the preemption application and as

such this is not a fit case where the intervention of this court is warranted, invoking jurisdiction under Article 227 of the Constitution of India.

Having considered the facts of the case and upon considering the submissions made by both the parties and also keeping in view the weighty consideration that a litigant ought not to be denied a hearing on merits and that by default, litigation should not be terminated, specially when the petitioner has shown interest to contest, I am inclined to give one more opportunity to the petitioner of hearing the Pre-emption Misc. case on merits, subject to payment of further cost of Rs. 5,000/-.

The impugned order dated 30.7. 2019 is hereby set aside on condition that the petitioner herein would pay Rs. 15,000/- to the bank account furnished by the opposite party herein on 13.6.2019 before the court below within 15 days from the date of communication of the order. On such payment by the petitioner within the period, the original Pre-emption Misc. case being J. Misc. Case no. 7 of 2011 will be restored to its original file with original number.

However, if the petitioner fails to deposit the said amount as stated above, within the aforesaid period, the impugned order shall revive.

C.O. 3820 of 2019 is accordingly disposed of.

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.)