

29.02.2024
Item No.18
gd/ssd

CO/3364/2023
HASEN MANDAL
VS
TUNUWARA BIBI

Md. Harun All Rashid
..for the petitioner.

Mr. Manas Kumar Das,
Mr. Asraf Mondal
..for the opposite party

The judgment and order dated 24th March, 2023 passed by the learned District Judge, Murshidabad in Misc. Appeal No.1 of 2019 is under challenge in this civil revisional application.

The petitioner filed an application under Section 8 of the West Bengal Land Reforms Act before the learned Civil Judge (Junior Division), 1st Court, Berhampore, District Murshidabad which was registered as Misc.(Pre-emption) Case No.36 of 2015.

The pre-emption case was filed before the learned Trial Judge upon depositing a sum of Rs.1,100/- though the consideration mentioned in the impugned deed was Rs.2,00,000/-.

The learned Trial Judge by a judgment and order dated October 12, 2018 allowed the misc. case with a direction that the right, title and interest in respect of the property mentioned in the impugned

deed shall vest upon the petitioner herein after he deposits the balance consideration money together with statutory interest at the rate of 10% within four months from the date of the order.

Pursuant to the said direction passed in the judgement and order dated October 12, 2018, the petitioner deposited the balance amount of Rs.2,18,900/- on 27th November, 2018.

Being aggrieved by the judgment and order dated October 12, 2018 passed in Misc. (Pre-emption) Case No.36 of 2015, the opposite party preferred a miscellaneous appeal before the learned District Judge, Murshidabad at Berhampore.

The learned District Judge after taking note of the proposition of law laid down by the Hon'ble Supreme Court in *Barasat Eye Hospital and ors. v. Kaustabh Mondal* reported in (2019) 19 SCC 767 held that if the entire sale consideration amount together with statutory interest was not deposited at the time of filing the application for pre-emption such misc. case would not be maintainable in the eye of law.

The learned Court of Appeal below also relied upon the decision of the Hon'ble Supreme Court in the case of *Abdul Matin Mallick v. Subrata Bhattacharjee* reported at (2022) 7 SCC 147.

In the light of the aforesaid observation the learned Court of Appeal below allowed the miscellaneous appeal thereby setting aside the judgment and order dated October 12, 2018 passed by the learned Civil Judge in Misc. (Pre-emption) Case No. 36 of 2015.

In view of the settled proposition of law, this Court is not inclined to interfere with the judgment and order dated 24th March, 2023 passed by the learned District Judge, Murshidabad in Misc. Appeal No.1 of 2019.

In view thereof, CO 3364 of 2023 stands dismissed.

There will be no order as to costs.

Urgent certified copy of this order, if applied for, be given to the learned advocates for the parties on usual formalities.

(HIRANMAY BHATTACHARYYA, J.)