

12.03.2024
Sl. No.21(DL)
srm

C.O. No. 3574 of 2023

Sri Dipak Kumar Giri

Versus

Smt. Kalpana Maji @ Kolpana Maji & Ors.

Mr. Surya Prasad Chattopadhyay,
Mr. Arjun Samanta,
Mr. Ankit Chatterjee

...for the Petitioner.

1. The revisional application arises out of an order dated June 30, 2023 passed by the learned Civil Judge (Senior Division), 3rd Court at Howrah, in Title Suit No.137 of 2020.
2. By the order impugned, the learned court rejected an application filed by the defendant No.7. The learned court was of the view that as the proceeding was not one under Section 8 of the West Bengal Land Reforms Act (hereinafter referred to as the said Act), the requirement of deposit of the entire value of the suit property as per the deed of sale was not mandatory. The suit was one for specific performance of contract and for exercise of a preferential right of pre-emption and for injunction. Accordingly, on the basis of such finding, the learned court rejected the application.

3. The learned Advocate for the petitioner submits that the law mandated that in a suit for specific performance of contract there must be a pleading indicating that the plaintiffs had performed their part of the obligation or were willing to do so as per the contract. The pleadings and the conduct of the parties should indicate sufficient willingness and capability on the part of the plaintiffs to purchase the property on the basis of the purported contract, the specific performance of which has been sought in the suit.
4. Relying upon the decision of the Hon'ble Apex Court in the matter of Mehboob-Ur-Rehman (Dead) through legal representatives vs. Ahsanul Ghani reported in (2019) 19 SCC 415, the learned Advocate has submitted that the plaint does not disclose any such willingness on the part of the plaintiffs to conclude the contract. No averments have been made that the plaintiffs had the financial capability to purchase the suit property. Without such pleadings, the learned court could not have continued with the suit.
5. In the decision of Ahsanul Ghani (supra), the Hon'ble Apex Court had held that a plaintiff had to establish his willingness through pleadings and by leading evidence. That the plaintiff had performed his part of

the contract or was always ready and willing to do so.

The conduct of the parties, with a view to arrive at a finding as to whether the plaintiff was all along ready and willing to perform his part of a contract was a mandatory requirement under Section 16(c) of the Specific Relief Act and such conduct must also be determined from the attending circumstances. If the pleadings were absent and the conduct of the plaintiff did not reflect such willingness, the suit for specific performance could not be decreed.

6. There is no quarrel with the proposition of law as enunciated by the Hon'ble Apex Court. However, the application which was filed by the defendant No.7 was for a direction upon the plaintiffs to deposit the entire value of the suit property on the ground that the suit with a prayer for pre-emption, without deposit of the value of the suit property, should not be entertained by the court and the value as per the deed of sale should be deposited in order to trigger off the right of pre-emption.
7. The learned court held that the suit was not under Section 8 of the West Bengal Land Reforms Act, 1955 and as such there was no requirement of deposit of the entire consideration amount with the plaint.

8. Although an argument has been advanced that nomenclature of the application should not be taken into consideration, but the pleadings should actually be considered for the court to decide what was the actual purpose of such application, this court does not find that the pleadings reflected any challenge to the pleadings in the plaint.
9. Having considered paragraph 2 and the prayer, this Court does not find that the questions decided in Ahsanul Ghani (supra) was raised before the learned trial Judge. No question of maintainability of the suit on the grounds urged, have been raised.
10. For convenience, paragraph 2 and the prayer are quoted below:

“2. That though the plaintiffs filed the instant suit for pre-emption but did not deposit the value of the suit property before the Ld. Court and as such without deposition of the value of the suit property of which the plaintiffs claimed for pre-emption the suit is not maintainable and as such the value of the suit property as mentioned in the Deed of Sale must be deposited before further proceeding to show their intention and capability of purchasing the said property and/or for security, otherwise and defendants will unnecessarily be suffered irreparable loss and injury due this fictitious and baseless suit.

That this petition is made bonafide and for ends of justice.

Prayer:-

In the above circumstances, your petitioner/defendant no.7 most humbly prays that

your Honour would be pleased to pass necessary order for depositing the value of the property as mentioned in the Deed of Sale of the suit property and to pass such other order/orders as your Honour may deem fit and proper.”

11. I do not find any illegality in the order impugned.
12. Under such circumstances, the learned court was not even called upon to decide the issue which has been urged before this Court.
13. The revisional application is, thus, dismissed.
14. There shall be no order as to costs.
15. Parties are to act on the basis of the server copy of this order.

(Shampa Sarkar, J.)