

Court No. 6
(265719)

19.03.2025
(AD 12)
(S. Banerjee)

CO 679 of 2025

Nipul Basak
Vs.
Manju Rani Saha

Mr. P. K. Bhoumick
Mr. Anirban Saha

...for the petitioner

This application under Article 227 of the Constitution of India is at the instance of the preemptee and is directed against an order dated April 25, 2024 passed by the learned Additional District Judge, Fast Track Court, Ranaghat in Misc. Appeal No. 27 of 2019. The opposite party herein filed an application under Sections 8 and 9 of the West Bengal Land Reforms Act, 1955. The preemption application was allowed by the learned trial Judge. The petitioner herein preferred a miscellaneous appeal which ultimately stood dismissed. Thereafter, the order of preemption was put into execution. In connection with the said execution case the opposite party herein filed an application under Order 21 Rule 97 read with Section 151 of the Code of Civil Procedure praying for an order of police help. The said application was registered as Misc. Case No. 14 of 2015.

The learned Executing Court by an order dated November 14, 2019 allowed the misc case under Order 21 Rule 97 CPC thereby allowing the prayer for two Sub-inspectors of Police, two armed men constables and two armed lady constable.

Being aggrieved by the said order the petitioner herein preferred a miscellaneous appeal being no. 27 of 2019 which was dismissed by the order dated April 25, 2024.

Mr. Bhoumick, learned advocate appearing for the petitioner submits that the order of preemption has not yet attained finality as the petitioner has preferred an application under Article 227 of the Constitution of India before this Court challenging the order passed by the first appellate court in the miscellaneous appeal. Unfortunately the said civil revision application stood dismissed for default and thereafter the petitioner filed an application for restoration of the civil revision application along with a prayer for condonation of delay.

Mr. Bhoumick submits that since the civil revision application is pending, the learned Judge of the first appellate court ought not to have decided the miscellaneous appeal.

Mr. Bhoumick could not produce any document to show that the civil revision application has been restored to its original file and number.

Mere pendency of a restoration application or an a civil revision application cannot operate as a stay of execution.

Since the order of preemption is still in subsistence and there is no order passed by any superior forum staying the operation of the order of preemption, this Court is of the considered view that the learned first appellate court cannot be faulted for deciding the Misc. Appeal No. 27 of 2019.

Mr. Bhoumick further submits that the petitioner herein did not resist and, therefore, there was no occasion for granting police help.

However, after going through the materials on record this Court finds that the learned Executing Court as well as the first appellate court while deciding the miscellaneous appeal took note of the report of the Bailiff which was marked as Exhibit – 1 wherefrom it is evident that the Bailiff was resisted by the petitioner herein who refused to leave the decretal property and caused obstruction.

After going through the materials on record this Court is also not inclined to accept the contention of Mr. Bhaumick that the property is not identifiable.

The learned first appellate court took note of the evidence of the PW-1 and PW-2 and arrived at a factual finding that the suit plot was identified. The learned court of appeal below assigned cogent reasons for dismissal of the miscellaneous appeal. The said order does not suffer from any infirmity warranting interference under Article 227 of the Constitution of India.

Accordingly, CO 679 of 2025 stands dismissed without, however, any order as to costs.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties upon compliance of requisite formalities.

(Hiranmay Bhattacharyya, J.)