

Court No. 6
(265719)

06.05.2025
(AD 16)
(S. Banerjee)

CO 1430 of 2025

Setab Ali & Anr.
Vs.
Alam Sk.

Mr. Tilak Mitra
Mr. Omar Faruk Gazi
Md. Muslehuddin

...for the petitioners

This application under Article 227 of the Constitution of India is directed against judgment and order dated January 30, 2025, passed by the learned Additional District Judge, Fast Track 1st Court at Lalbagh, Murshidabad in Misc. Appeal No. 19 of 2024 affirming the order dated September 22, 2023 passed by the learned Civil Judge (Jr. Division), Additional Court Lalbagh, Murshidabad in Misc. (Preemption) case No. 54 of 2019.

The petitioners herein filed an application under Sections 8 and 9 of the West Bengal Land Reforms Act, 1955 on August 14, 2018 praying for preemption of the transfer in favour of the opposite party vide deed dated July 24, 2019. The petitioners claim to be non-notified co-sharers. The consideration money stated in the impugned deed was Rs. 1,12,000/-. The petitioners filed the application for preemption

alleging that the consideration price is an inflated one and the actual consideration that was paid for such transfer was only Rs. 20,000/-. Accordingly, the petitioners deposited a sum of Rs. 22,000/- being the consideration money together with 10% thereon at the time of filing of the application under Sections 8 and 9 of the 1955 Act.

It is not in dispute that pursuant to an order dated January 16, 2020, the petitioners were allowed to deposit the balance amount of Rs. 1,02,000/- and the petitioners deposited the same on January 17, 2020.

The learned trial judge rejected the application for preemption by placing reliance upon a decision of the Hon'ble Supreme Court in the case of *Barasat Eye Hospital & Ors. –Vs.- Koustabh Mondal*, reported at (2019) 19 SCC 767 and the decision in the case of *Abdul Matin Mallick –Vs.- Subrata Bhattacharya (Banerjee) & Ors.*, reported at 2022 (3) Indian Civil Cases 641 (SC).

It is now well settled that an application for preemption would not be maintainable if on the date of filing of such application the applicant did not deposit the amount of consideration as mentioned in the deed together with 10% thereon.

Though the learned trial judge allowed the petitioners to deposit the amount of short consideration but, the same was at the risk of the petitioners.

To the mind of this court, the learned trial judge applied the law laid down by the Hon'ble Supreme Court in the case of *Barasat Eye Hospital (supra)* and the proposition laid down in the *Abdul Matin Mallick (supra)* correctly and was right in dismissing the misc. case.

The petitioners, however, preferred an appeal being Misc. Appeal No. 19 of 2024 and the learned judge of the first appellate court dismissed the misc. appeal by a judgment and order dated January 30, 2025 by placing reliance on the proposition of law laid down by the Hon'ble Supreme Court in the aforesaid decisions.

For the reasons as aforesaid, this court does not find any infirmity in the order passed by the learned judge of the first appellate court affirming the order of the learned trial judge. Accordingly, CO 1430 of 2025 stands dismissed. There shall be no order as to costs.

(Hiranmay Bhattacharyya, J.)