

Sl. 54
20.03.2025
Court No.6
BP

C.O. 1708 of 2024

Anurag Mondal & Ors.
-versus-
Sahajan Sekh & Ors.

Mr. Biswajit Hazra
Mr. Tanmoy Mukherjee
Mr. Archisman Sain
Mr. Sk. Nadeem Ahmed
... for the petitioners

Mr. Sibashis Chatterjee
..for the opposite parties

This application under Article 227 of the Constitution of India is at the instance of the judgement debtor and is directed against an order being no. 78 dated 22nd March, 2024 passed by the learned Civil Judge (Junior Division), 1st Court, Jangipur, Murshidabad in Misc. Case No. 14 of 2022 arising out of Title Execution Case No. 3 of 2014.

The petitioners herein filed an objection under Section 47 of the Code of Civil Procedure which was registered as Misc. Case No. 14 of 2022. The ground of objection to the said execution was that the execution case was filed more than twelve years after the decree was passed on 8th March, 1989.

Mr. Tanmoy Mukherjee, learned advocate appearing for the petitioners submits that the opposite parties herein filed the execution case

sometimes in the year 2014 for putting the decree passed on 8th March, 1989 into execution. By referring to Article 136 of the Constitution of India Mr. Mukherjee submits that such an execution case ought to have been filed within a period of twelve years from the date of the decree.

The learned executing court by the impugned order rejected the misc. case filed under Section 47 of the Code of Civil Procedure. The Title Suit No. 64 of 1988 was decreed on 8th March, 1989. The decree was put into execution in the year 1990 giving rise to Title Execution Case No. 4 of 1990. Thus, the said title execution case was filed within the time limit prescribed therefor. Record reveals that the record of the Execution Case got misplaced for almost twenty years and finding no other alternative the decree holder had to file a fresh execution case being Title Execution Case No. 3 of 2014.

The learned executing court applied the well-settled maxim that the act of court cannot prejudice any party to the fact of the case on hand and observed that since the records of the earlier execution case was misplaced the decree holder had to file the present execution case. The learned trial judge was right in holding that the present execution case shall be deemed to be continuation

of the original Title Execution Case No. 4 of 1990. It is not in dispute that the decree was put into execution within the prescribed period of limitation but for the reasons beyond the control of the petitioners, the present execution case had to be filed. But the fact remains that the decree which was put into execution by filing the Title Execution Case No. 40 of 1990 is sought to be continued by way of the instant title execution case.

At this stage it would be relevant to take note of Rule 477 of the Civil Rules and Orders which deals with execution cases that were pending or may be subsequently filed. Sub-rule 8 of Rule 477 states that when a certified copy of a decree is in existence, the only question is how far the decree was satisfied, and this must be determined on such evidence as may be available and the Presiding Officer must exercise his own discretion in each case and it is impossible to lay down any general rule.

It is not the case of the judgement debtors that the decree has been satisfied.

Therefore, the decree which was put into execution by Title Execution Case No. 4 of 1990 was rightly allowed to be continued with by the Title Execution Case No.3 of 2014.

For such reason, this Court is not inclined to interfere with the order impugned.

Accordingly, C.O. 1708 of 2024 stands dismissed.

There shall be, however, no order as to costs.

Urgent certified photocopy of this order, if applied for, be supplied to the parties expeditiously on compliance of usual legal formalities.

(Hiranmay Bhattacharyya, J.)