

April 4, 2025
Sl. No.5
Court No.36
s.biswas

RVW 152 of 2024
With
CAN 1 of 2024
CAN 2 of 2024
In
CO 4308 of 2023

Ajoy Mondal and another
vs.
Vigneshwara Properties Pvt. Ltd. and others

Mr. Surya Prasad Chattopadhyay
Mr. Ankit Chatterjee
... for the applicants
Mr. Probal Kr. Mukherjee, Sr. Adv.
Mr. Arnab Roy
Mr. Satyam Mukherjee
... for the respondent no.1

CAN 1 of 2024 is an application for condonation of delay in filing the review application. It appears that there has been a delay of 21 days.

Considering the explanation given in the said application, this court finds that sufficient cause has been shown by the petitioner for condonation of the delay of 21 days in filing the review.

Accordingly, CAN 1 of 2024 is allowed. The delay is condoned. The review application being RVW 152 of 2024 is registered.

This is an application for review of the order dated March 11, 2024 passed in CO 4308 of 2023. The revisional application was filed by the defendant no.1 in Title Suit No.509 2021 which was pending before the learned Civil Judge (Junior Division), 1st Court at Barasat. The plaintiff had filed the suit for declaration and injunction and had been favoured

with an order of status quo in respect of the suit property. The said order was challenged in the misc. appeal before the learned Additional District Judge, 7th Court at Barasat. The Misc. Appeal No.81 of 2023 filed by the defendant no.1/petitioner in the revisional application was dismissed and the order of status quo was affirmed.

Aggrieved, the defendant no.1 filed the revisional application before this court on various grounds. It was contended that although the appellate court had found that the balance of convenience and inconvenience was in favour of the defendant no.1 and that the plaintiff had failed to prove a prima facie case, the order of status quo was still affirmed. This resulted in stoppage of the construction of the defendant no.1.

The plaintiffs opposed the revisional application on the ground that their title could be traced from the deed of 2018. The same was a prior deed. The vendor of the plaintiffs had become the absolute owners by virtue of the deed of 2018. The plaintiffs had purchased the property from one Achintya and the deed was executed by Sibnath Mondal, the constituted attorney of Achintya.

Both the parties had title deeds in their favour and the trial court was of the view that unless the suit was decided finally, it would be difficult to

declare which deed would prevail. Any construction in the meantime would create an irreversible situation. The plaintiffs would not be able to reap the benefit of a decree, even if the plaintiffs ultimately succeeded in the suit.

This court discussed the plaint case and the defence case. The plaint case was that, Aswini was the owner. While Aswini was in exclusive possession, the property was transferred to the defendant nos. 3 and 4, namely, Jiten Mondal and Shipra Mondal, by a registered deed dated December 12, 1990. The possession was delivered. Later, the said defendants transferred the suit property to Achintya vide Deed No. 2517 of 2018. Achintya executed a general power of attorney, bearing No. 5745 of 2020, in favour of one Sibnath Mondal. Sibnath Mondal sold the property by a registered deed, bearing No. 7440 of 2020, to the plaintiffs. The plaintiffs thereafter erected a bamboo fencing around the property and started enjoying the same by growing vegetables. The defendants, being land grabbers, were trying to take possession of the suit property and had also offered to buy out the plaintiffs, upon paying a meagre amount.

On the other hand, the case of the defendant no.1 was that the said defendant was the absolute owner in respect of the property in question, by

purchase of the same from Jiten Mondal and Shipra Mondal. The property originally belonged to Aswini, who had acquired right, title, interest and possession over the property in question. Thereafter, the property was transferred to Jiten Mondal and Shipra Mondal. Subsequently, Jiten Mondal and Shipra Mondal transferred the property in 2019 to the petitioner. The defendant No.1 relied on the deed being Deed No. 7989 of 1990. Jiten Mondal and Shipra Mondal were directors of a company which had availed a cash credit loan from the Central Bank of India, Shyambazar Branch in 2002, by mortgaging the title deed No. 7989 of 1990. The loan account was declared NPA and the bank filed an application for recovery of the loan before the Debt Recovery Tribunal at Kolkata which was followed by an execution case. The Mondals applied for a compromise or settlement of the loan account by payment of the entire outstanding to the Central Bank. That, the outstanding loan amount and interest came to around Rs.90,00,000/-. The settlement amount was paid by the defendant no.1 and the bank had delivered the title deed in favour of the defendant no.1. A possession letter was also issued in favour of the defendant no.1. Subsequently, mutation, conversion, building

sanction plan, etc. were applied for and later, permitted. The construction commenced.

This court recorded that the plaintiffs were aware that the loan from the Central Bank of India was availed of by Jiten Mondal and Shipra Mondal. They were also aware of the litigation before the DRT. The sale deed by which the plaintiffs had purchased the property of Achintya through Sibnath Mondal reflected such facts. Yet, the plaintiffs purchased the encumbered property, having full knowledge thereof. The appeal court found the title of the plaintiffs to be defective. Such finding was available in the order impugned to the revisional application. This court held that, as sanction was granted in respect of the construction, such action would indicate that the property was free from all encumbrances.

Under such circumstances, this court was of the view that once the plaintiffs had failed to, prima facie, prove a strong case of acquiring right, title and interest, which was better than that of the defendant no.1, the defendant no.1 should be allowed to continue with the construction. The construction was made subject to the result of the suit.

Mr. Chattopadhyay, learned counsel for the plaintiffs, in support of the review application, submits that the finding of this court that, the

construction was at an advanced stage was incorrect and should be rectified. The construction had started only one and half months prior to the filing of the suit. Secondly, the observation that the plaintiffs' title was defective, would prejudice the trial and as such the order should be reviewed. Further ground for review was that the prior deed of 2018 should be taken as a strong, prima facie, case in favour of the plaintiffs.

I do not find any satisfactory ground for review of the order passed. Admittedly, the plaintiffs purchased the property later. The order records the reasons for which this court was of the view that the trial court and the learned appellate court below, had both committed an error in granting an order of status quo, when both the courts had come to specific findings that, the plaintiffs had failed to prove a, prima facie, case and had purchased an encumbered property. The courts found that, their title was defective. On consideration of such findings, this court was of the view that, the question of granting an order of status quo, thereby, stopping the construction on the property, did not arise. These were the findings of this court.

The observation of this court that the construction was at an advanced stage, was not the basis for allowing the construction. This court dealt

with the plaint case and the defence case, the findings of the learned courts below and arrived at its own conclusions. In any event, whether the construction was at initial stage or at a belated stage, made no difference at all. Secondly, the observation that, the plaintiffs had a defective title, was not the finding of this court, but the court had discussed the finding of the lower appellate court which was available at page 12 of the order impugned in the civil revision.

Thus, the issues raised at this stage, are not adequate grounds for review of an order. Review of an order is permissible when there is an error apparent on the face of record or there is discovery of new evidence which could not be put forth before the court at the time when the order was passed and appreciation of which, may result in a different kind of an order in favour of the applicant seeking a review. Other reasons for which review is permissible, are all analogous to the above two reasons.

Under such circumstances, this court does not find any ground to review the order. The review application stands dismissed. The observations in the order from which the review is sought, are all tentative. The observations were made in respect of an interlocutory application, which should not affect

the merits of the suit. The merits of the suit will be decided on the evidence of the respective parties and their pleadings.

The review application stands dismissed and the connected application stands disposed of.

Urgent photostat certified copy of the order, if applied for, be given to the parties, upon compliance of all necessary formalities.

(Shampa Sarkar, J.)