M/L- 250
08/09/2025
Ct. No.-6
Aritra

C.O. 2907 of 2024

Taraknath Dey
Vs.
Swapan Dey & Ors.

Mr. Supriyo Chattopadhyay
Ms. Debosri Chatterjee

....for the petitioners

After the entire list was called out, the learned advocate appearing for the petitioner mentions this matter citing grave urgency. Considering the prayer of the learned advocate appearing for the petitioner and also that no caveat has been lodged in this matter, this matter is taken up for hearing.

This application under Article 227 of the Constitution of India is at the instance of the pre-emptee and is directed against an order being No.35 dated June 28, 2024 passed by the learned Civil Judge (Jr. Div.), 1st Court at Arambagh, District-Hooghly in connection with Pre-emption Miscellaneous Case No.26 of 2019.

By the order impugned the application filed by the petitioner herein praying for dismissal of the pre-emption miscellaneous case stood rejected.

Mr. Chattopadhyay, learned advocate appearing for the petitioner submits that that the opposite party herein filed the pre-emption miscellaneous case under Sections 8 and 9 of the West Bengal Land Reforms Act, 1955 (in short 1955 Act) on ground of non-notified co-sharer. He contended that the date of registration of the impugned deed was on April 16, 2019. He contended that the miscellaneous case was filed on June 10, 2019 depositing only a sum of Rs.20000/- though the consideration amount mentioned in the impugned deed was Rs.5,50,000/-. He further submits that the opposite party herein deposited the balance consideration money along with 10% statutory interest total amounting to Rs.5,83,000/- only on March 10, 2022. He submits that since the balance consideration money was deposited beyond the stipulated period of limitation, the learned trial judge ought to have dismissed the pre-emption miscellaneous case.

In support of his contention he placed reliance upon a decision of the Hon'ble Supreme Court in the case of **Barasat Eye Hospital & Ors. vs. Kautabh Mondal**, reported at **(2019) 19 SCC 767**.

The period of limitation for filing an application under Sections 8 and 9 of the 1955 Act on the ground of non-notified co-sharer is one year from the date of such transfer. It is not in dispute that the pre-emptor/opposite party herein had time till April 17, 2020 to file an application for pre-emption under Section 8 of the 1955 Act on the ground of non-notified co-sharer.

The Hon'ble Supreme Corut in a S*uo Moto* Writ Petition (Civil) No.3 of 2020 took cognizance of onset of COVID-19 pandemic and by an order dated March 23, 2020 extended the period of limitation prescribed under the general law or Special law whether compoundable or not w.e.f. March 15, 2020 till further orders. The order dated March 23, 2020 was extended from time to time.

The Hon'ble Supreme court in the said *suo moto* writ petitioner passed an order dated January 10, 2022 holding that in cases where the limitation would have expired during the period between March 15, 2020 till February 28, 2022 notwithstanding the actual period of limitation remaining, all persons shall have a limitation period of 90 days from March 1, 2022. It was further observed that in the event the actual balance period of limitation remaining with effect from March 1, 2022 is greater than 90 days, the longer period would apply.

In the case on hand the balance period of limitation available as on March 15, 2020 would be less than 90 days and, therefore, in view of the said order passed by the Hon'ble Supreme Court, the period of limitation for filing an application under Section 8 of the 1955 Act, shall stand extended for a period of 90 days from March 1, 2022.

It is not in dispute that in the case on hand the balance consideration amount was deposited on March 10, 2022 i.e. well before 90 days from March 1, 2022. Thus, the balance consideration amount was deposited within the prescribed period of limitation.

The Hon'ble Supreme Court in **Barasat Eye Hospital** (supra) in paragraph 35 of the said report observed that it was not the case where an application has been filed within the time and the amount is deficit but the balance amount has been deposited within the time meant for the exercise of that right.

Thus the Hon'ble Supreme Court carved out an exception in cases where the application has been filed within time with a deficit amount and the balance amount has been deposited within the time meant for the exercise of that right.

The case on hand squarely falls within the exception carved out by the Hon'ble Supreme Court in paragraph 35 of the said report wherein the Hon'ble Supreme Court recognized that in a case where the application has been filed within the time with a deficit amount the balance amount, can be deposited within the time meant for exercise of such right.

As observed hereinbefore that the balance amount has been paid within the time limit within which the opposite party could have exercised such right. The learned trial judge was right in holding that the balance consideration money along with statutory interest deposited on 10.03.2022 was within the period of limitation as extended by the Hon'ble Supreme Court. Thus the said deposit was a good deposit and could not be said to be made beyond the period of limitation as sought to be argued by the learned Advocate for the petitioner. This Court is, therefore, not inclined to interfere with the order impugned.

Accordingly, CO 2907 of 2024 stands dismissed.

There will be no order as to costs.

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

(Hiranmay Bhattacharyya, J.)