

CO 2995 of 2024**Smt. Sakuntala Shaw****Vs.****On the death of Sunit Kumar Pal, his legal heirs and
legal representative- Smt. Kanika Pal alias Kana Pal
& Anr.**

Mr. Pinaki Ranjan Mitra

...for the Petitioner

Learned advocate for the petitioner is present. None appears on behalf of the opposite parties despite service of notice.

Let the affidavit of service filed in Court be kept with the record.

This revisional application filed under Article 227 of the Constitution of India is directed against the order dated July 16, 2024, passed by the learned Civil Judge (Sr. Division), 1st Court at Howrah in Title Suit No. 82 of 2013.

Learned Trial Judge, by the said order, was pleased to dismiss the application filed by the petitioner under Section 152 and 153 of the Code of Civil Procedure and grant liberty to the petitioner to avail the provisions of the Code of Civil Procedure by filing execution case.

It appears from the records that by an order

dated December 12, 2014, passed in Title Suit No. 82 of 2013 by the learned Civil Judge (Sr. Division), 1st Court at Howrah, the learned Judge was pleased to pass decree in Title Suit No. 82 of 2013 *ex parte*. The defendant was directed to execute the registered sale deed in favour of the plaintiff/petitioner in respect of the said property within three months on receiving the balance consideration of Rs.2,50,000/-, failing which the plaintiff was granted liberty to file an application under the Specific Relief Act, 1963. After depositing the balance amount of consideration, the petitioner filed an application with a prayer to permit and allow the petitioner/plaintiff to file a fresh deed for approval and registration in respect of the suit property, as the original draft deed, which was sent to the District Sub-Registrar, Howrah, was not available.

Perusing the records, it appears that the learned Trial Court by an order dated August 21, 2023, was pleased to consider the prayer of the opposite parties regarding filing of written statements and dismissed the prayer, but on the other hand, went on to hold that the petition filed

by the plaintiff for execution and registration of the sale deed be dismissed without considering the facts of the said application. Although the petitioner/plaintiff filed an application under Section 152 and 153 read with Section 151 of the Code of Civil Procedure for rectification of a technical mistake, but the same application was also dismissed by the impugned order dated July 16, 2024.

Upon perusing the materials on record and upon hearing the learned advocates, this Court is of the view that as an ex parte decree was passed in Title Suit No. 82 of 2013, which is still existing and not set aside by any competent Court and the petitioner/plaintiff has complied the directions of the learned trial Court in depositing the balance amount of consideration on November 7, 2023, and the petition to allow filing fresh deed for approval submitted by the plaintiff was dismissed without considering the materials and by order dated July 16, 2024, the petition for rectification under Section 152 and 153 CPC filed by the petitioner was also dismissed the said orders dated August 21, 2023 and July 16, 2024 cannot

be sustained and the same should be set aside.

The matter should be remitted to the learned Trial Court to reconsider the application made by the petitioner/plaintiff on August 18, 2023 praying to permit and allow for filing a fresh deed for approval in accordance with law, if necessary, upon obtaining a report from the District Sub-Registrar to whom the draft deed was sent for registration. Upon considering the said application, the learned Trial Court should decide the same by passing a reasoned order and the learned Court should take necessary steps and dispose of the same as expeditiously as possible.

Accordingly, this revisional application stands disposed.

Urgent certified *website* copies of this order, if applied for, be made available to the parties upon compliance with the requisite formalities.

(Biswaroop Chowdhury, J.)