

12.06.2025

Court No.652

Sl. No.1
Mujahid

CO 2979 of 2023

Sri. Jagannath Halder
Vs.
Bimal Mondal & Ors.

Mr. Sounak Bhattacharya,
Mr. Sounak Mandal,
Mr. Abhirup Halder

...for the petitioner

1. Present petition has been filed challenging the impugned order dated 29th April, 2023 whereby miscellaneous case under Section 47 of CPC was dismissed by the learned Civil Judge (Junior Division) 2nd Court at Diamond Harbour, 24-Parganas (South).

2. The decree holder/opposite party filed a Title Suit No.173 of 1993 before the learned Civil Judge (Junior Division) 2nd Court at Diamond Harbour for eviction of the judgment debtor/petitioner. This suit was dismissed by the learned trial court on 11th October, 1996. The appeal filed against this order bearing Title Appeal No.86 of 1998 was allowed by the learned Civil Judge (Junior Division) 2nd Court at Diamond Harbour vide order dated 30th March 2002. The petitioner/judgment debtor filed second appeal No.2165 of 2002 before this court. The Hon'ble Division Bench of this court vide order dated 23rd August, 2016, dismissed the second appeal .

3. Pursuant to this, the petitioner/judgment debtor filed an application under Section 47 of CPC stating therein that in fact, the property regarding which decree has been passed, had already been acquired by the Government of West Bengal and decree holder in the garb of the decree is trying to usurp another property which is in possession of the petitioner.

4. Learned counsel for the petitioner submits that the learned trial court had mechanically rejected the application. Learned counsel submits that the matter may be remanded back with an opportunity to the petitioner to file an application for local investigation so as to bring evidence on record that the subject matter of the decree is actually not in existence.

5. I have considered the submissions. Perusal of the record indicates that the court of first appeal in Title Appeal No.86 of 1998 passed a detailed order vide order dated 30th March, 2002. Perusal of the record also indicates that the petitioner/judgment debtor had taken a plea before the first appellate court also that the tenanted premises was demolished by the Government of West Bengal and the suit premises does not have any existence at all. The learned first appellate court after considering the submissions and taking into account the schedule

filed along with the plea and also took into account the compromise decree passed in Title Suit No.6/63 and inter alia held that the description of the suit premises as lying in that decree squarely tallies with the description of the suit premises as provided in schedule to the plaint of the present suit. The learned first appellate court also took into account the testimony of the petitioner/defendant/judgment debtor and rejected the contention.

6. The second appeal filed by the petitioner/judgment debtor bearing No. 2165 of 2002 was taken up for hearing by the Hon'ble Division Bench on 23rd August, 2016 and it was inter alia held that there is no substantial question of law and thus the appeal was dismissed. It is pertinent to mention here that in the second appeal also the issue regarding identity of the suit property was taken into account. The endeavour of the court should always be to bring finality to the litigation. The decree holder cannot be made to suffer on the basis of frivolous pleas taken by the judgment debtor. The decree was passed by the first appellate court on 30th March, 2022 the second appeal has already been dismissed by this court. The petitioner/judgment debtor's plea regarding the description of the suit property has been considered threadbare by the first appellate court and the affirmed that by this court.

7. Perusal of the order also indicates that the petitioner had not led any evidence before the court even in the proceedings under Section 47 of CPC. The matter cannot be remanded back merely to give an opportunity to the petitioner to fill up lacuna. The court considers that there is no substance in the present petition, hence the petition is dismissed.

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

(Dinesh Kumar Sharma, J.)