

IN THE HIGH COURT AT CALCUTTA
Civil Revisional Jurisdiction
APPELLATE SIDE

Present:

The Hon'ble Justice Shampa Dutt (Paul)

CO 3551 of 2024

Rafik Uddin Molla

Vs.

Mehrunnessa Khatun & Ors.

For the Petitioner : Mr. Sadip De,
Mr. Abhijit Sarkar.

For the Opposite Party : Mr. Saunak Bhattacharya,
Mr. Saunak Mondal,
Mr. Abhirup Halder,
Mr. Anirban Saha Ray.

Hearing concluded on : 13.08.2025

Judgment on : 03.09.2025

Shampa Dutt (Paul), J.:

1. The civil revision has been preferred against order No. 123 dated 6th September, 2024 passed by the learned Civil Judge, Junior Division at Kakdwip in Misc. Pre-emption Case No. 27 of 2008.
2. Vide the order under challenge, the trial Court held as follows:-

“.....From the reading of the instant paragraph of the order of the Hon'ble Supreme Court of India it is abundantly clear to the Court that the petitioner had to deposit the entire

sale consideration along with 10% interest upon the same within the time as stipulated under Section 8 (1) of West Bengal Land Reforms Act, 1955. Here in the said order Supreme Court has not made it mandatory that the entire amount shall be deposited at the time of filing of the case rather **Supreme Court is very clear in its observation that unless the entire amount had been deposited before the Court, the right of preemption would not be triggered off** & here in the instant case the petitioner has deposited the entire consideration amount with interest, therefore, this Court finds no merit in the submission of the OP as alleged in the non-maintainability petition, that Supreme Court had ordered in the aforesaid judgment that prior to filing of the instant misc. case the petitioner had to deposit the entire consideration amount along with 10% levy upon the same, hence, this Court is inclined to hold that the instant misc. preemption case is maintainable at this stage on contest.

Hence, it is

ORDERED

that the instant Misc. Preemption Case being no. 27 of 2008 be the same is declared to be maintainable at this stage on contest.

The non-maintainable petition as filed by the OP on 03.09.2024 is rejected on contest.

***Fix 26.11.2024 for evidence of PW1 positively, i/d
n/o.***

***D & C by me.
Civil Judge (Jr. Divn.), Kakdwip
South 24-Parganas***

***Sd/-
Civil Judge (Jr. Divn.),
Kakdwip, South 24-Parganas"***

3. Being aggrieved the opposite party has preferred the civil revision on the ground that the opposite parties no. 1 and 2 admitted that the sale deed was executed upon payment of consideration money of Rs. 40,000/- on 31st January, 2001 amongst other statement. The present petitioner as well as the proforma opposite party have filed their respective objections to the said application.
4. The said application was filed on 19th April, 2001 by depositing Rs. 20,000/- along with 10% levy on the said deposit being Rs. 2,000/- being the total amount of Rs. 22,000/- on the date of filing. By an order dated 19th April, 2001, the learned Court recorded about the deposit of Rs. 22,000/- and after recording the same, directed the office of the learned Court to issue notice upon the opposite parties by registered post as well as through Court Bailiff. Subsequently, an application for injunction was moved on 23rd April, 2001, which was considered by the learned Court but was rejected by Order No. 3 dated 23rd April, 2001. By order No. 8 dated 21st May, 2001, the learned Court recorded that the petitioner has deposited another sum of Rs. 22,000/- and the deposit receipts were taken on record.
5. The total consideration amount of the sale was Rs.40,000/-. It is the contention of the petitioner that as per the judgment of the Hon'ble

Supreme Court the total amount of consideration money with the further sum with 10% levy on the said deposit **was to be made as a one time deposit** and as the opposite party herein had not done so, he is not entitled to claim preemption as prayed for.

6. It is further stated that the finding of the learned trial Judge being in contrary to the said provision of law is thus liable to be set aside.
7. **Section 8(1) of the West Bengal Land Reforms Act lays down as follows:-**

*“Section 8(1) If a portion or share of a [plot of land of a raiyat is transferred to any person other than a [co-sharer of a raiyat in the plot of land] [the bargadar in the plot of land] may, within three months of the date of such transfer, or] any [co-sharer of a raiyat in the plot of land] may, within three months of the service of the notice given under sub-section (5) of section 5, or any raiyat possessing land [adjoining such plot of land] may, within four months of the date of such transfer, apply to the [Munsif having territorial jurisdiction,] for transfer of the said portion or [share of the plot of land] to him, subject to the limit mentioned in [section 14M,] **on deposit of the consideration money together with a further sum of ten per cent of that amount.....”***

8. The petitioner has filed written notes and relied upon the judgment of the Supreme Court in **Abdul Matin Mallick -vs- Subrata Bhattacharjee (Banerjee) and Ors., Reported in (2022) 7 SCC 147,** (Paragraphs 6.3 to 9).
9. Paragraph 9 of the said judgment being relevant, is quoted below:-

“9. At this stage, it is required to be noted that even the High Court in the impugned judgment and order has permitted the

*pre-emptors to deposit the balance said consideration. However, faced with the decision of this Court in Barasat Eye Hospital and in light of the observations made by us hereinabove that along with the pre-emption application, the pre-emptors have to deposit the entire sale consideration with additional 10% **and only thereafter** the further enquiry can be conducted as per Section 9 of the 1955 Act and **therefore, unless and until the same is complied with, the pre-emption application would not be maintainable**, the High Court is not justified in permitting the pre-emptors to now deposit the balance sale consideration with additional 10% **while deciding the revision application**. Such a direction/permission/liberty would go against the intent of Section 8 of the 1955 Act.”*

10. Learned counsel for the opposite party has relied upon the following judgments:-

*i) **Nurul Islam –vs- Esratun Bibi, reported in 2017 SCC OnLine Cal 11063;***

*ii) **Barasat Eye Hospital and Ors. –vs- Kaustabh Mondal, reported in (2019) 19 SCC 767.***

11. In **Nurul Islam –vs- Esratun Bibi (supra)**, paragraph 40 is relevant to this case:-

“40 : We thus conclude by holding that Article 97 of the Limitation Act, 1963 is the appropriate provision which will govern the period of limitation for filing application for pre-emption by the non-notified co-sharer. We also hold that as per the provision contained in Article 97 of the Limitation Act, the period of Limitation will begin to run from the date when the purchaser takes under the sale sought to be impeached physical possession of the whole or part of the property sold. We also hold that where the property sold is of such nature which does not admit of physical possession either of the whole or part thereof the period of limitation will

*begin to run when the instrument of sale is registered meaning thereby when the registration is complete as per Section 61 of the Registration Act and in both cases the **period of limitation is one year.***

12. In **Barasat Eye Hospital and Ors. –vs- Kaustabh Mondal (supra)**, paragraph 35 is relevant to this case:-

*“35 : As we have discussed above, once the time period to exercise a right is sacrosanct, then the deposit of the full amount within the time is also sacrosanct. **The two go hand-in-hand. It is not a case where an application has been filled within time and the amount is deficient but the balance amount has been deposited within the time meant for the exercise of the right.** We are saying so as such an eventuality may arise, but in that case, **the right under the application would be triggered off on deposit of the amount which, in turn, would be within the time stipulated for triggering the right.** That not having happened, we are of the view that there cannot be any extension of time granted to the respondent now, to exercise such a right. This is, of course, apart from the fact that this speculative exercise on behalf of the respondent has continued for the last fourteen years, by deposit of 50% of the amount.”*

13. Considering the judgments as relied upon and more specifically paragraph 35 of the judgment in **Barasat Eye Hospital (supra)**, this Court finds that learned trial Judge has rightly acted as per the observation of the Supreme Court and decided the issue in accordance

with law and thus the order under challenge, requires no interference by this Court.

14. Civil revision is dismissed.

15. The trial Court to proceed expeditiously.

16. Pending applications, if any, stands disposed of.

17. Interim order, if any, stands vacated.

18. Urgent Photostat certified copy of this judgment, if applied for, be supplied to the parties, expeditiously after complying with all necessary legal formalities.

(Shampa Dutt (Paul), J.)