

16.04.2025
123.
Ct.29.
Bd.

C.O. 3788 of 2024

Chhabirani Majhi & Ors.
-Vs-
Sri Basanta Kumar Ghosh & Ors.

Mr. Narendra Nath Malakar
... for the petitioners.

Mr. Swapan Kumar Dutta
Mr. Sambuddha Dutta
Mr. Shamit Dutta
Ms. Madhumita Saha
... for the opposite parties

Being aggrieved by and dissatisfied with the Order No. 4 dated 20.05.2024 passed by the learned Additional District Judge, 1st Court, Katwa in Civil Revision No. 01 of 2024, present application has been preferred. By the order impugned, Court below has rejected the revisional application filed by the petitioners herein considering limited scope of revision under the provisions of section 115 of the Code of Civil Procedure.

Being aggrieved by that order, the petitioners herein submits that the order impugned is cryptic, which fails to consider that there is no proper explanation in the application filed under section 5 of the Limitation Act, by the opposite party no. 1, but Court below has affirmed restoration of the Execution Case No. 7 of 2001 by allowing Misc.

Case 42 of 2023. Be it mentioned that aforesaid Execution Case No. 7 of 2001 was filed by decree-holder for execution of final decree passed by the Court in a partition suit.

It is further alleged by the petitioners that Court below allowed the applications of the opposite party no. 1 herein without serving any notice and without giving any opportunity of hearing to the petitioners. Both the Courts below failed to consider that the opposite party no. 1 herein had the knowledge regarding the dismissal of the Title Execution Case but he failed to state any bonafide reason in support of restoration of the execution case, in his application. In fact, the orders impugned are based on no consideration and as such liable to be set aside.

He further submits that the delay should not be excused as a matter of generosity and since the opposite party no. 1, herein failed to show any diligence in prosecuting the matter, both the courts below ought not to have given indulgence to the plaintiffs/decreed holders. In this context he relied upon a judgment of the Apex Court in the case of ***Union of India & Anr. -vs- Jahangir Byramji Jeejeebhoy (D) through His LR.***

Learned counsel appearing on behalf of the opposite parties raised objection contending that in the said Execution Case No. 7 of 2001, petitioners herein filed one Application under section 47 of the Code, being Misc. Case No. 17 of 2005, which was dismissed by the Executing Court, against which petitioners herein preferred Civil Revision No. 3 of 2011 which was also rejected by Revisional Court and thereafter those petitioners against that order, preferred Civil Revisional Application No. 3473 of 2014 before this High Court, which was also rejected by this Court on 20.07.2023. Opposite parties contended that after dismissal of Civil Revisional Application by the High Court, they had gone to Executing Court for taking steps, wherefrom they have learnt that said Execution Case No. 7 of 2001 has been dismissed for default on 13.11.2018, which was beyond their knowledge. Accordingly they made prayer for restoration of Execution case, which the Court below allowed by the impugned order.

Accordingly, opposite party no. 1 submits that there was no intentional laches or intentional inaction on their part in not taking steps in their execution case as they were under an impression that due to pendency of Revisional Application

before the High Court, the Execution Case shall not proceed.

As such, executing court was justified in allowing the application for restoration and the Revisional Court also reasonably refused to exercise his jurisdiction and as such the orders impugned do not call for interference by this Court invoking this Court's jurisdiction under Article 227 of the Constitution of India.

Considering the submissions made by both the parties and on perusal of the order of Executing Court, it appears that the executing court has recorded that the execution case was dismissed as neither the judgment debtor nor the decree holders were present. He also recorded that the technical construction of provisions, that leaves no room for reasonable elasticity of interpretation, should be guarded against and he further noted that care must be taken that justice is done to both sides and accordingly he restored the execution case in its original file with original number after setting aside the order of dismissal.

Having considered the submissions made by both the parties, I find nothing perverse or illegality or impropriety in coming to the ultimate findings of

the court below or in the finding of Executing Court.

There is no quarrel with the well-settled proposition of law that while dealing with prayer for condonation of delay, there is no reason to deal with all such cases with generosity specially when it has been filed at a belated stage. But fact remains that in our adversary legal system, the parties are generally appear through their Advocates and usually it is their mindset that his obligation is only to select a lawyer and to brief him, pay the fees and then to trust the lawyer to do the rest of the things, because in most of such cases parties are not very much acquainted with the Court's procedure. In civil cases appearance of parties are also not generally required unless directed. Having made such entrustment he takes it for granted that he is neither required to go to Court every date nor to act as a watchdog of the Advocate.

What constrained me to raise all these hypothetical references is that a person who after obtaining a decree in a partition suit has filed execution case about 25 years back and fighting all along with the Judgment debtor for the said long period from Executing Court to High Court, such

decree holder would not have gained in any manner whatsoever by not appearing before the Executing Court on 13.11.2018, when the matter was called on for hearing. No presumption can be attached in every case that delay is deliberate. Weighty consideration in such cases is that a litigant ought not to be denied a hearing on merit unless his prayer for restoration smacks of malafide or has been put forth as part of a dilatory strategy.

In such view of the matter, the order impugned passed by the Court below as well as the order passed by the executing court dated 06.01.2023 does not call for any interference by this Court.

C.O. 3788 of 2024 is accordingly dismissed.

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

(Dr. Ajoy Kumar Mukherjee, J.)