

20.02.2025
36.
Ct.237.
Bd.

C.O. 3795 of 2024

Rina Begum @ Fazlunnesha
-Vs-
Khondekar Abdul Hasnat & Ors.

Mr. Sarbananda Sanyal
Ms. Poulami Chakraborti ...for the Petitioner.

The petitioner herein assailed the judgment passed by Additional District Judge, 1st Court, Katwa in Misc. Appeal No. 4 of 2023 dated 17.10.2023.

By the judgment impugned learned court below has affirmed the order of the trial court by which the trial court held that the pre-emption misc. case is not maintainable in the eye of law.

The fact as narrated before the court is that the opposite party purchased the case property at a consideration money of Rs. 4,99,000/- which is also apparent from the purchase deed but the petitioner at the time of filing the instant pre-emption application deposited only Rs. 2,00,000/- as consideration money and Rs.20,000/- towards statutory interest. Since the petitioner did not deposit the entire consideration money along with statutory interest at the time of filing the pre-emption application the trial court relying upon the judgment passed by the Apex Court in the case of **Barasat Eye Hospital & Ors. -vs- Kaustabh**

Mondal reported in (2019) 19 SCC 767 and the case of **Abdul Matin Mallick -vs- Subrata Bhattacharjee (Banerjee) and Ors.** reported in **2022(3) ICC 641(SC)** came to a finding that non-deposit of the entire consideration money at the time of filing the pre-emption application renders the case not maintainable. The trial court further held that the defect of non-payment of entire consideration money along with interest at the time of filing of the application is incurable in nature, as such he dismissed the pre-emption application on the ground of maintainability.

Having heard the facts and circumstances of the case and that the trial court has correctly interpreted the law and since there is no perversity or illegality in the order impugned, I find nothing to interfere invoking this Court's jurisdiction under article 227 of the Constitution of India.

Accordingly, C.O. 3795 of 2024 thus, stands dismissed on merit.

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

(Dr. Ajoy Kumar Mukherjee, J.)