

CO 3847 of 2024**Sri Dipta Kumar Mondal**
vs.
Kalyanbrata Dey

Mr. Pinaki Dhole
Mr. Rabindra Kumar Pathak
.....for the petitioner

Affidavit-of-service filed by the petitioner is taken on record.

The opposite party is not represented.

This application has been preferred against the judgment dated 25th June, 2024 passed by the learned Additional District Judge, 2nd Court, Arambagh.

By the judgment impugned, the learned Court below allowed the Misc. Appeal and thereby set aside the judgment passed by the Trial Court in Pre-emption Case No. 25 of 2010.

Being aggrieved by that order, learned counsel appearing on behalf of the petitioner submits that the Trial Court granted Pre-emption decree in favour of the petitioner/preemptor. However, learned Court below set aside the judgment of the Trial Court on the ground that the statutory deposit has not been made in time.

Learned counsel for the petitioner in this context submits that he made the deposit as per direction made by the Trial Court and since such deposit was made long before the judgment passed in ***Barasat Eye Hospital vs. Koustav Mondal, AIR online 2019 SC 2075*** the Court below ought to have held that the statutory deposit which was made in

accordance with the Court's order and which was made prior to the judgment passed in **Barasat Eye Hospital** (supra), the present case is distinguishable in fact and in law with that of the judgment passed in **Barasat Eye Hospital** (supra). Accordingly, he prayed for setting aside the judgment impugned and to affirm the judgment passed by the Trial Court.

I have considered the submissions made by the petitioner. It appears that the Court below while disposing the application has clearly held that the pre-emptor did not deposit the statutory amount as per provisions of law at the time of filing of the case and in fact he deposited the same after long lapse of time. The Pre-emption case was filed in 2010 when the petitioner deposited only Rs.55,000/- out of Rs.8,28,061/- and he had deposited rest amount only on 21.04.2014.

In **Barasat Eye Hospital** case (supra) the Court observed that the Pre-requisite to even endeavour to exercise the weak right of Pre-emption is the deposit of the amount of sale consideration and 10% levy on that consideration, as otherwise Section 8(1) of the Act will not be triggered off, apart from making even the beginning of Section 9(1) of the said Act otiose. (para – 28)

Now the question raised by the petitioner that whether said interpretation of law would be made effective in a case where the deposit was made long

before the ratio laid down in the judgment of **Barasat Eye Hospital** case(supra), is no more res intriga. In a recent judgment **Kanishk Sinha vs. the Stat of West Bengal & another** (decided on 7th February, 2025), the Supreme Court held that the law of prospective and retrospective operation is absolutely clear, where a law made by the legislative is always prospective in nature, unless it has been specifically stated in the statute itself about its retrospective operation, the reverse is true for the law which is laid down by a Constitutional Court or law as it is interpreted by the Court. The judgment of the Court will always be retrospective in nature, unless the judgment itself specifically states that the judgment will operate prospectively (para – 3).

In such view of the matter, the argument raised by the petitioner that the ratio laid down in the **Barasat Eye Hospital** case (supra) is not applicable in the present case does not hold water. In such view of the matter, the Court below did not commit any mistake in setting aside the order of the Trial Court. The order impugned also does not suffer from any illegality or impropriety or perversity and as such the interference of the High Court invoking its jurisdiction under Article 227 of the Constitution is uncalled for.

In view of the above, **CO 3847 of 2024** is hereby **dismissed**.

Urgent photostat certified copy of this order, if applied for, be furnished to the parties expeditiously upon compliance of all legal formalities.

(Dr. Ajoy Kumar Mukherjee, J.)