

03.03.2025
Item No.209
Ct. No. 30
Aloke

C.O. 4010 of 2024

**Tara Begum & Ors.
Vs
Md. Shahid & Ors.**

Mr. Asit Baran Raut
Mr. Tuhin Subhra Raut
Mr. Asit Kr. Chowdhury
... for the petitioners

Mr. Kushal Chatterjee
Mr. Oishik Chatterjee
... for the opposite parties

The present civil revision has been preferred against an order dated 3rd September, 2024 passed by the learned Civil Judge (Junior Division), 2nd Court at Sealdah in Misc. Case No. 62 of 2022.

Vide the order under challenge, the trial Court has rejected the petitioners' application under Order 1 Rule 10 (2) of CPC filed in a Misc. Case under Order 9 Rule 13 CPC filed by the other judgment-debtors in Title Suit No. 78 of 2015.

Admittedly, the predecessor of the present petitioners was the defendant no. 1 in the Title Suit.

The Title Suit was decreed ex parte against all the defendants in the year 2018.

An execution proceeding was initiated by the decree-holder also in the year 2018.

At that stage the predecessor of the present petitioners was impleaded as a judgment debtor and the execution case was registered against him.

On 20.11.2021 as the predecessor of the present petitioners who was the defendant no. 1/judgment-debtor no. 1 **expired** and the petitioners herein were substituted as his legal heirs to the execution proceedings.

Service was attempted but as the same was 'refused' the execution case also proceeded ex parte.

The Misc. Case in the present was registered in the year 2022 by the other judgment-debtors, which did not include the present petitioners. The petitioners then filed the application under Order 1 Rule 10 (2) of CPC on 29.10.2011, praying for being added as a parties in the Misc. Case initiated by other judgment-debtors, on the ground that in order to avoid multiplicity of proceedings they were necessary parties in the Misc. Case.

Learned counsel for the petitioner has relied upon the decision in the case of **Pankajbhai Rameshbhai Zalavadia vs. Jethbhai Kalabhai Zalavadiya (Deceased) through Lrs. & Ors.** reported in **AIR 2018 SC 490** in support of said contention.

It appears that the trial Court on the observation that the service in respect of each of the judgment-debtor is to be considered separately, rejected the application under Order 1 Rule 10 (2) CPC.

On hearing the learned counsels for the parties and on perusal of the materials on record it appears that admittedly service in execution proceedings was 'refused' by the judgment-debtor no. 1 series, who are the petitioners in the present case.

It is the case of the petitioners that they came to know about the execution proceedings and the Misc. Case during the puja vacation in 2022. The application under Order 1 Rule 10 (2) CPC has been filed immediately thereafter in the Misc. Case. The execution proceedings has been stayed pending disposal of the Misc. Case.

It appears that the application under Order 1 Rule 10 (2) of CPC was made by the petitioners herein to be added as a party in the Misc. Case under Order 9 Rule 13 CPC.

A Misc. Case under Order 9 Rule 13 is a proceeding in which the Court considers as to whether the ex party decree passed against the petitioners therein was in accordance with law and whether the grounds as made out by the petitioners therein was justified, one of them being the service of notice.

As to whether the notice upon the petitioners in the Misc. Case was proper or not is to be considered while disposing of the Misc. Case and not at the initial stage.

In the present case the application under Order 1 Rule 10 (2) CPC was preferred on the ground that the petitioners were admittedly the successors and legal heirs of the deceased judgment-debtor/defendant no. 1 in the original suit. Though a fresh Misc. Case could have been instituted by the petitioners herein, the application under Order 1 Rule 10 (2) CPC also could have been considered by the trial Court, to avoid multicity of proceedings.

Considering the fact that the other judgment-debtors/defendants who have initiated the Misc. Case and the predecessor of the present petitioners were all parties (defendants) in the self-same title suit, whether the ex parte decree was passed in accordance with law on being satisfied as to proper service upon the judgment-debtors is to be considered by the Court at the time of disposal of the Misc. Case, which also is the case of the present petitioners.

In view of such facts the order dated 03.09.2024 passed by the learned Civil Judge (Junior Division), 2nd Court at Sealdah in Misc. Case No. 62 of 2022, is set aside. The application under Order 1 Rule 10 (2) CPC preferred by the petitioners herein is allowed. The petitioners herein be added as petitioners in the Misc. Case.

It is made clear that the petitioners herein will have to satisfy the Court at the time of disposal of the Misc. Case as to the service upon their predecessors/judgment-debtors.

The grounds made out as to the delay in preferring the application under Order 1 Rule 10 (2) CPC is also considered and accepted by this Court and the delay if any is condoned.

The trial Court is directed to dispose of the Misc. Case expeditiously preferably within a period of 60 days from the date of communication of this order without granting any unnecessary adjournments to either of the parties.

C.O. 4010 of 2024 is accordingly disposed of.

There will be no order as to costs.

All connected applications, if any, stand disposed of.

Interim order, if any, stands vacated.

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

(Shampa Dutt (Paul), J.)