

20.03.2026
Item No.39
Ct. No. 30
Aloke

CO 822 of 2022

Somnath Gayen
Vs
Amar Krishna Biswas & Anr.

Mr. Amitabha Ghosh
... for the petitioner

1. Affidavit-of-service filed be kept with the record.
2. The revisioinal application has been preferred challenging Order No. 13 dated 9th March, 2022 passed by the learned Civil Judge (Junior Division), 1st Court at Barasat, North 24 Parganas in connection with Misc. Case No. 20 of 2020 (Pre-emption).
3. Vide the impugned order, the learned trial Court has been pleased to reject the defendant/petitioner's application under Order 7 Rule 11 CPC.
4. It is submitted by the learned counsel for the petitioner that the said application was filed in a Misc. pre-emption case wherein the total consideration amount along with 10% interest was not deposited within the period of limitation.
5. The learned trial Court has held as follows :

“On scrutinizing the Order sheet, it can be seen clearly that the consideration amount of the property in question along with the 10% sum has been deposited by the petitioner in this Court by way of

challan. It appears from Order no. 1 dated 13.03.2020, that the petitioner had deposited Rs.3,30,000/- by virtue of challan no. 305(1) dated 13.03.2020. Further, vide Order No. 2 dated 17.03.2020, it can be deciphered that by dint of challan no. 310(1) dated 17.03.2020, the petitioner had placed Rs.13,05,700/- before this Court, frustrating all the dues in connection with the disputed property.”

6. It appears from the copy of the deed filed that the consideration amount of the said transfer was Rs.14,87,000/-. The trial Court also did not discuss the decision of the Supreme Court which was relied upon by the learned counsel for the petitioner. The impugned order appears to be against the decision of the Supreme Court in ***Barasat Eye Hospital and Ors. vs. Kaustabh Mondal (2019) 19 SCC 767*** which was also relied upon by a Coordinate Bench of this Court in **CO 1708 of 2023 dated 14.03.2024 in Swajit Sankar Mookherjee vs. Anupam Koley & Ors.**

7. Accordingly, the impugned order is hereby set aside and the trial Court is directed to hear the application under Order 7 Rule 11 CPC afresh keeping in mind the observations made in this order by relying upon the judgment quoted

above, and dispose of the same within two months from the date of this order.

8. **CO 822 of 2022 stands disposed of.**

9. Urgent Photostat certified copy of this order, if applied for, be given to the parties, upon usual undertakings.

(Shampa Dutt (Paul), J.)