D/L 14
17.11.2026
Ct. No. 2
Mujahid

CO 3697 of 2023

Jahar Purkait & Ors.
Vs.
Maniklal Mondal (since deceased) represented by
legal heirs Bikash Mondal & Anr.

(Via Video Conference)

Mr. Mukteswar Maity
Ms. Manika Sarkar
...for the petitioners

1. Affidavit of service filed. Let it be taken on record. Learned counsel submits that the opposite party has duly been served. However, there is no representation on behalf of the opposite party.

2. Learned counsel for the petitioners states that opposite parties/plaintiffs had filed a Title Suit No. 160 of 2006, in which an ex parte decree dated 8th December, 2010 was filed. After decree was passed the opposite parties/plaintiffs filed a Title Execution Case No. 5 of 2011. In this, the petitioners/defendants move their application under Section 47 of the Code of Civil Procedure. Vide the impugned order, the learned 1st Additional Civil Judge (Jr. Division) rejected this application vide order dated 24th August, 2023.

3. During the course of submissions, learned counsel for the petitioners submits that he shall be

granted liberty to withdraw the present petition and file an application before the learned trial court for setting aside the ex parte order on the ground that the petitioners/defendants was never served. However, learned counsel submits that in the meantime, the petitioners may be granted some protection as in the execution petition, the petitioners may lose the possession. Learned counsel undertakes that he may be filed an application for setting aside the ex parte order within two weeks.

4. In view of the submissions, the present petition is disposed of with liberty to the petitioners to file an application for setting aside the ex parte order/decree before the learned trial court within two weeks. The learned trial court shall take up the same immediately upon filing and pass an appropriate order in accordance with law.

5. In the meantime, the execution proceeding in Title Execution No. 5 of 2011 shall remain stayed till 31st December, 2026. In case the trial court do not find any case to stay the execution proceedings, the opposite parties/plaintiffs/decree-holder shall be at liberty to proceed with the execution proceedings.

6. However, it is also pertinent to mention here, that this court has not gone into the merits of the case and no expression made herein shall

tantamount to be an expression on the merits of the case.

7. Accordingly, the petition stands disposed of.

8. All parties shall act on the server copy of this order duly downloaded from the official website of this Court.

(Dinesh Kumar Sharma, J.)