

MISC. CASE NO. 176 OF 2016
C.N.R. NO. WBPS01-001087-2016

ORDER NO. 77 DATED 05.08.2023

Today is fixed for passing order in respect of the petition dated 23.12.2022 as filed by the petitioner.

It is contention of the Third Party/applicants that this Court, vide order dated 02.04.2022, had directed that this case shall be proceeded simultaneously with Misc. Case No. 29/2020. Accordingly, both the cases were proceeding simultaneously. Subsequently, the application under Or. 21 R. 97 read with Sec. 151 of C.P.C. in Misc. Case No.176/2016 (instant case) was disposed of by this Court vide order dated 20.12.2022 without maintaining parity with the purport and purpose of its earlier order. Through such order dated 20.12.2022, the prayer for police help for execution of writ of delivery of possession as preferred by the Petitioner / decreeholder was allowed. It is the further contention of the Third Party / applicants that if the said order dated 20.12.2022 is not recalled or kept in abeyance till disposal of Misc. Case no. 29/2020, then the Third Party/applicants herein shall be highly prejudiced and hence they have prayed for necessary order.

Though no written objection is filed by the Petitioners but they raised objection against the prayer of the Third Party/applicants stating that the application filed from the side of the Third Party/applicants is a ploy to impede and delay the enjoyment of the fruit of decree by the Petitioner/decreeholders. An order of outright rejection of the petition is thus prayed for from their side.

Ld. Lawyers of both sides were heard at length and in full on the previous date itself.

Perused the case record and the application under consideration.

Considered.

For the purpose of recapitulation, be it noted that the Ejectment Execution case no.79/2016 was filed by the decreeholders/Petitioners for execution of Ej. Suit No. 6955/2014. The writ issued from the Court was returned unexecuted with report of obstruction for which the Dhr./O.P. filed application under Or. 21 R. 97 read with Sec. 151 of C.P.C. for police help and the same was registered as Misc. Case No. 176/2016 (i.e. the instant case) and was proceeding ex-parte. Meanwhile, the Third Party / applicants herein, who were not the party in Misc. Case no.176/2016 or in Ej. Ex. Case no. 79/2016, filed an application under Or. 21 R.97, 100, 101 read with Sec.151 of C.P.C. and the same has been registered as Misc. Case No. 29/2020.

ORDER NO. 77 contd.

In Misc. Case No. 176/2016 (instant case), the prayer for stay of the said case filed by the instant Third Party / applicants were rejected twice vide order dated 19.02.2021 and 20.03.2021. Again, similar petition of the instant Third Party / applicants was rejected on 02.04.2022 wherein a note was made directing the Misc. Case no.176/2016 and Misc. Case no. 29/2020 to proceed simultaneously.

Similar order of simultaneous disposal of these two cases was also passed in Misc. Case No. 29/2020 i.e. the instant case vide order dated 02.04.2022. It is on this very note of “**simultaneous proceeding**” and/or “**simultaneous disposal**” in both the case records, the Third Party / applicants herein have harped the fate of their instant petition seeking either recall of the said order or keeping the same in abeyance till disposal of Misc. Case No. 29/2020.

Ostensibly and invariably, the order no. 69 dated 20.12.2022 in Misc. Case No. 176/2016 (instant case) appears to have been passed by the Id. Predecessor P.O. inadvertently overlooking the order no. 56 dated 02.04.2022 for, there is clear mention in the latter that “**The instant Misc. Case be proceeded simultaneously with Misc. Case No. 29/2020**”. Had there been no such oversight, then the order for disposal of the Misc. Case No. 176/2016 would not have been passed.

The order no. 56 dated 02.04.2022 in Misc. Case No. 176/2016 and order no. 57 dated 02.04.2022 in Misc. Case no. 29/2020 clearly reflect the mind of the Court that it intended to dispose of the two cases simultaneously so that no prejudice is caused to any of the parties. Such disclosure as can be gathered from the case record are sufficient to convince this Court on the merits of acceptability in the contention of the petitioner herein. However, keeping of the order dated 20.12.2022 in Misc. Case No. 176/2016 in abeyance instead of its recall may suffice the purpose.

Accordingly, it is.....

Ordered

that the petition dated 23.12.2022 filed by the petitioners is allowed on contest but in part.

The order dated 20.12.2022 in Misc. Case No. 176/2016 is hereby kept in abeyance till the disposal of the Misc. Case No.29/2020.

However, the effect of this order shall stand automatically recalled in the event the case (Misc. Case No. 29/2020) is adjourned at the behest of the petitioners herein on any future date till its disposal.

Fix 07.10.2023 for further order.

Dictated and corrected by me,

JUDGE

JUDGE
[5TH BENCH]
J.O. Code No. WB00928.

MISC. CASE NO. 29 OF 2020
C.N.R. NO. WBPS01-000168-2020

ORDER NO. 76 DATED 05.08.2023

Today is fixed for passing order in respect of the petition dated 24.01.2023 as filed by the petitioner.

At the very outset, be it noted that on 24.01.2023, the petitioner had sought for preponement of the date of hearing of the petition dated 06.01.2023. As such, the substantive petition for disposal in this order would be the petition dated 06.01.2023 instead of petition dated 24.01.2023. The anomaly is thus rectified accordingly.

It is contention of the petitioners that this Court, vide order dated 02.04.2022, had directed that this case shall be proceeded simultaneously with Misc. Case No.176/2016. Accordingly, both the cases were proceeding simultaneously. Subsequently, the application under Or. 21 R. 97 read with Sec. 151 of C.P.C. in Misc. Case No.176/2016 was disposed of by this Court vide order dated 20.12.2022 without maintaining parity with the purport and purpose of its earlier order. Through such order dated 20.12.2022, the prayer for police help for execution of writ of delivery of possession as preferred by the decreeholder was allowed. It is the further contention of the petitioners that if the said order dated 20.12.2022 is not recalled or kept in abeyance till disposal of Misc. Case no.29/2020, then the petitioners herein shall be highly prejudiced and hence they have prayed for necessary order.

Though no written objection is filed by the O.Ps. but they raised objection against the prayer of the petitioners stating that the application filed from the side of the petitioner is a ploy to impede and delay the enjoyment of the fruit of decree by the decreeholders. An order of outright rejection of the petition is thus prayed for from their side.

Ld. Lawyers of both sides were heard at length and in full on the previous date itself.

Perused the case record and the application under consideration.

Considered.

For the purpose of recapitulation, be it noted that the Ejectment Execution case no.79/2016 was filed by the decreeholders / O.Ps. for execution of Ej. Suit No. 6955/2014. The writ issued from the Court was returned unexecuted with report of obstruction for which the Dhr. / O.P. filed application under Or. 21 R. 97 read with Sec. 151 of C.P.C. for police help and the same was registered as Misc. Case No. 176/2016 and was proceeding ex-parte. Meanwhile, the petitioners herein, who were not the party in Misc. Case no.176/2016 or in Ej. Ex. Case no. 79/2016, filed an application under Or.21 R.97, 100, 101 read with Sec.151 of C.P.C. and the same has been registered as

ORDER NO. 76 contd.

Misc. Case No.29/2020 i.e. the instant case.

In Misc. Case No. 176/2016, the prayer for stay of the said case filed by the instant petitioners were rejected twice vide order dated 19.02.2021 and 20.03.2021. Again, similar petition of the instant petitioners was rejected on 02.04.2022 wherein a note was made directing the Misc. Case no.176/2016 and Misc. Case no. 29/2020 to proceed simultaneously.

Similar order of simultaneous disposal of these two cases was also passed in Misc. Case No. 29/2020 i.e. the instant case vide order dated 02.04.2022. It is on this very note of “**simultaneous proceeding**” and/or “**simultaneous disposal**” in both the case records, the petitioners herein have harped the fate of their instant petition seeking either recall of the said order or keeping the same in abeyance till disposal of Misc. Case No. 29/2020.

Ostensibly and invariably, the order no. 69 dated 20.12.2022 in Misc. Case No. 176/2016 appears to have been passed by the Id. Predecessor P.O. inadvertently overlooking the order no. 57 dated 02.04.2022 for, there is clear mention in the latter that “However, the present **Misc. Case will be disposed of simultaneously with Misc. Case No. 176/2016**”. Had such oversight not been occasioned, then the order for disposal of the Misc. Case No. 176/2016 would not have been passed.

The order no. 56 dated 02.04.2022 in Misc. Case No. 176/2016 and order no. 57 dated 02.04.2022 in Misc. Case no. 29/2020 clearly reflect the mind of the Court that it intended to dispose of the two cases simultaneously so that no prejudice is caused to any of the parties. Such disclosure as can be gathered from the case record are sufficient to convince this Court on the merits of acceptability in the contention of the petitioner herein. However, keeping the order dated 20.12.2022 in Misc. Case No. 176/2016 in abeyance instead of its recall may suffice the purpose.

Accordingly, it is.....

Ordered

that the petition dated 06.01.2023 filed by the petitioners is allowed on contest but in part.

The order dated 20.12.2022 in Misc. Case No. 176/2016 is hereby kept in abeyance till the disposal of the Misc. Case No.29/2020.

However, the effect of this order shall stand automatically recalled in the event the case (Misc. Case No. 29/2020) is adjourned at the behest of the petitioners herein on any future date till its disposal.

Fix 07.10.2023 for hearing of the Misc. Case. Petitioners to come ready with their witnesses.

Dictated and corrected by me,

JUDGE

JUDGE
[5TH BENCH]
J.O. Code No. WB00928.