

Title Appeal – 129 of 2018

03, dtd 28.03.2019

The Appellant file hazira. Today is fixed for admission of the appeal.

Heard the Ld. Advocate for the Appellant. He has moved the petition for admission of the Appeal.

Perused the case record and certified copy of the Ex-parte Judgment dtd. 27.09.2018 and decree dtd. 05.10.2018 passed by the Ld. Civil Judge (Jr. Div.), at Dantan, Paschim Medinipur in T.S Case No. 105 of 2012 along with certified copy of the impugned order. It appears that the appeal is filed within time and so the appeal is admitted.

Issue notice upon the Respondents. Requisite at once.

Call for LCR.

Fix 29.06.2019 for SR and LCR.

Dictt and Corrt by me

D.J.

District Judge
Paschim Medinipur

Misc Appeal 10 of 2019
(Registration No. 10 of 2019)

Order No. 02, dated 16.03.2019

Today is fixed for admission of the Appeal.

The Appellants file hazira.

Heard the Ld. Advocate for the Appellants. He has moved the petition for admission of the Appeal.

Perused the case record and certified copy of the Judgement dated 20.11.2018 passed by the Ld. Civil Judge (Jr. Div.), 3rd Court, Paschim Medinipur in J. Misc Case No. 31 of 2012 along with certified copy of the impugned order. It appears that the appeal is filed within time and so the appeal is admitted.

Issue notice upon the Respondents. Requisite at once.

Call for LCR.

Fix 31.05.2019 for SR and LCR.

Dictt and Corrt by me

D. J.

District Judge
Paschim Medinipur

Civil Revision

Order No. 04, dtd 22.02.2018

The Plaintiffs file haziran. Today is fixed for admission of the Revision.

Heard the Ld. Advocate for the Plaintiffs. He has moved the petition for admission of the Revision.

Perused the case record and certified copy of the Judgment dt. 16.11.2017, passed by Ld. Civil Judge (Sr. Divn.), 3rd Court, Paschim Medinipur in T.S Case No. 26 of 2005 along with certified copy of the impugned order. It appears that the Revision is filed within time and so the Revision is admitted.

Issue notice upon the O.Ps/Respondents. Requisite at once.

Call for LCR.

Fix for SR and LCR.

Dictt and Corrt by me

D.J.

District Judge
Paschim Medinipur

The stay petition is taken up for hearing.

It appears from the order impugned and the record on account of lapses and negligences on the part of this appellant interim injunction was recalled by the Ld Trial Court fixing 14.03.2017 for hearing of the injunction petition.

Having regard to the submission of the parties and other materials on record, this Court thinks that ad-interim injunction may be extended till the hearing of temporary injunction petition that is on 14.03.2017.

Hence, ad-interim petition is allowed partly and the prayer of ad-interim injunction is allowed till 14.03.2017 and the expiry of the stay order of injunction will automatically vacated if it is not extended in the mean time by this Court.

Dictt and Corrt by me

D.J.

District Judge
Paschim Medinipur

Other Appeal 85/2016

04 dtd. 21.02.2017

The appellant file hazira. Today is fixed for admission of the appeal.

Heard the Ld. advocate for the appellant. He has moved the petition for admission of the appeal.

Perused the case record and certified copy of the impugned order dtd. 06.08.2015 passed by the Civil Judge (Jr. Div.), 1st Court, Ghatal, Paschim Medinipur in O.S. case No. 39/2010 along with certified copy of the impugned order. It appears that the appeal is filed within time and so the appeal is admitted.

Issue notice upon the respondent. Requisite at once.

Call for LCR.

Fix for SR and LCR.

Dictt and corr by me

District Judge
Paschim Medinipur.

T.A 07/2017

Petition dated 8.01.2017 filed by the appellant is taken up for hearing and order. He has prayed thereby for stay of operation of the judgement and decree under challenge.

It appears from the plaint case that this defendant has also claimed his title through re- purchasing of mortgage.

Considering the defense case, parties are directed to maintain status quo in respect of possession of the suit property till the disposal of this Title Appeal or any order whichever may be earlier.

Dictt & Corrt by me

D.J.

District Judge,
Paschim Medinipur

J.Misc 107/2014

Order No. 16
07.02.2017

Today is fixed for hearing of the petition dated 29.09.2016 in which the petitioner has filed a report stating that they had kept the adopted ward in happy state and she is being looked after properly and that petition is supported by an affidavit.

Today also the home has filed petition and averment supported by an affidavit. After going through the petitions, the status reports are found satisfactory in view of new CARA.

Fixingfor further status report from both the ends.

Dictt & Corrt by me

D.J.

District Judge,
Paschim Medinipur

Act VIII-02/2016

Order No. 16
07.02.2017

Petitions filed by both the petitioners over a dispute in production of ward in question before the D.L.S.A, in the Court premises of West Midnapore.

It appears from the order No. 11 dated 03.11.2016 that the predecessor directed the petitioner to produce the ward before the Office of D.L.S.A on 2nd and 4th Friday of every month. At present the dispute centering over the matter that the petitioner has stated that during that production, O.P misbehaved with them and did not allow him to meet the ward properly. He has also stated in the earlier petition that the OP did not produce the ward in consecutive dates.

In this factual circumstances, this Court directs the O.P/wife to produce the ward positively on 2nd and 4th Friday of each month before the Office of D.L.S.A within Court premises in between 3 pm to 4 pm but this order of production is all along subject to welfare and welfare of the child.

The Secretary of the D.L.S.A is requested to look into the matter so that none of the party make any chaos in the said premises during visitation of the said ward.

OP filed a petition stating therein that she along with her ward will be at Delhi from 20.02.2017 to 15.03.2017 and during that period she will not be in a position to produce the ward before the Office of the D.L.S.A.

Heard both sides.

Prayer is considered with the consent of both the parties but further modification of the earlier order that the OP/wife will go on producing the child in coming three months on each Friday instead of 1st and 3rd Friday to compensate the period of non production of the ward during her stay at Delhi.

Thus, all the petitions are disposed of.

Tofor hearing and order.

Dictt & Corrt by me

D.J.

District Judge,
Paschim Medinipur

J. Misc 99/2016

Order No.03
14.02.2017

This is a petition dated 21.12.2016 under hearing relates to the prayer from the Respondent of T.A No. 108/2015 pending before the Ld. Additional & Sessions Judge, 3rd Court, Paschim Medinipur to Ld. Additional & Sessions Judge, Jhargram by means of administrative order.

He is assigned reason therein that the Respondent is very old and aged man and both the parties are resident of Sankrail under Jhargram jurisdiction so that the T.A No. 108/2015 is required to be transferred to the said Jhargram Court. Other side is present with a written submission that the Ld. Court where the case pending for the present in the Court of A.D.J, 3rd Court, Paschim Medinipur and they are men of Jhargram, that is why that Ld. Court does not get any time to deal with this sort of Civil Appeal. Hence, this case may be withdrawn and transferred to the said Jhargram Court. From their joint submission this Court comes to a conclusion that both the parties are men of that locality and they agree on the point of transfer.

In this circumstances, the prayer for application is allowed.

That the T.A 108/2015 is withdrawn and transferred to the said Jhargram Court with a direction to note the appeal in their register and to proceed with the appeal for disposal after affording reasonable opportunity to the parties.

Let a copy of this order be sent to the Ld. Additional District and Sessions Judge, 3rd Court, Paschim Medinipur and Ld. Additional District & Sessions Judge, Jhargram.

Let another copy of this order be sent to Ld. Civil Judge (Jr. Divn) Jhargram with a direction to send the record of T.S No. 85/2009 to the Court of Ld. Additional District & Sessions Judge, Jhargram.

Dict & Corrt by me,

D.J.

District Judge,
Paschim Medinipur.

Order No. 03,
14.02.2017

This is a petition filed by the respondent praying for transfer of the case record being No. T.A 29/2015 pending before the Ld. Additional District & Sessions Judge, 2nd Court, Paschim Medinipur to any other Additional District & Sessions Judge, Paschim Medinipur on the ground that the Ld. Additional District & Sessions Judge, 2nd Court is also a designated Court under POCSO and Ld. Court remains be seriously busy in hearing of cases under POCSO.

In this circumstances, this case may be withdrawn to any other Court from this busy Court. Considered the prayer and other sides appear. She does not oppose the prayer. Hence, the prayer is allowed.

Let the case record being T.A 29/2015 pending before the Ld. Additional District & Sessions Judge, 2nd Court be withdrawn and transferred to the Court of

All these Courts are accordingly requested to note the same in their respective register.

Dict & Corrt by me,

D.J.

District Judge,
Paschim Medinipur.

J. Misc 16/2002
Order No. 91, dated 15.02.2017

Today is fixed for hearing of the petition dated 07.06.2014 under order 1 rule 10 of the C.P.C filed by two petitioners praying for permission to be impleaded in the case as parties on the ground that after getting permission from the Court or without permission the Sebait Nikunja Bihari Das and after his demise his son Tapas Kumar Das is misusing the land of the deity and also misusing the sell proceeding of the land with the support to his said contention. He has filed few documents.

The son of the previous Sebait namely Nikunja Bihari Das of the deity opposed the prayer. Ld. Lawyer for the petitioner submits that this Court empowered Nikunja Bihari Das to sell out the property of the deity and submits the account of the same deity before the Court but either Nikunja Bihari Das nor after his demise his son Tapas Kumar Das is rendering any sort of account before the Court about that sell proceeding. This Tapas Kumar Das is grabbing the sell proceeding of the land under the veil of the previous Court's order in the name of his father. Ld. Lawyer for the Tapas Kumar Das submits that one petition is pending at the instance of Tapas Kumar Das before the Court in which he has prayed to be substituted in place of his father. So long is that the petition is not heard and he has not substituted the case and he is not in a position to render any account before the Ld. Court. Accordingly, there is no question as defalcation of fund or grabbing of Debuttya property. He further submitted that within the ambit of the order 1 rule 10 of the C.P.C this petitioner is not necessary party for the determination of the suit.

This case is not any party verses party for which the judge acts as a umpire. In this case this Court acts as a guardian of the deity not as a presiding officer or umpire of the game. So that the case was not filed when the case was under proceeding even after the disposal of the case. As guardianship remains intact with a view to protect the paramount interest and welfare of the deity and that duty cannot be performed on the basis of the documents and other evidences. In this case it appears that this petitioner may give some necessary information or unearth the mistry

which has been kept conceal. Thus, this Court finds it is necessary for the determination of the matter. In this case the matter is to protect paramount interest of the deity. In this land of thinking this Court thinks within ambit under order 1 rule 10 of the C.P.C. This petitioner is also necessary party for the determination of question. That apart another pending petition by Tapas Kumar Das is no way hindrance his prayer to be substituted. On the contrary of presence of this petitioner will render assistance to the Court to know the intention of Tapas Kumar Das behind the prayer to be substituted. Hence, the prayer prayed for to be impleaded in this J. Misc of the two petitioners namely Kakali Roy and Kalyaneswar Roy are considered and allowed.

Let the cause title of the case be amended accordingly. Let their name be substituted as OP.

To date 07.03.2017 for hearing of the pending petition filed by Tapas Kumar Das praying to be substituted in place of deceased father.

Dict & Corrt by me,

D.J.

District Judge,
Paschim Medinipur.

Examination in chief resumes on 15.02.2017

All the Sebaites of the said deity have consent for the proposed sell property. I prayed for permission of my sell. My prayer is bona fide and true. I have filed the photograph of the present temple of the said deity.

Dictt and Corrt by me

D.J.

District Judge
Paschim Medinipur

Act VIII 02/2003

Order No.....dated 15.02.2017

The petition dated 29.11.2016 filed by Sashikala is taken up for hearing in which she has prayed for her release from the appointment of legal guardian by this Court in respect of her minor daughter on the ground that she has attained her majority on 18.03.2013. It appears from the order dated 29.07.2003 that the petitioner was appointed as legal guardian in respect of both the persons and property of her minor son and daughter. And on 02.01.2012 vide order No. 64 this petitioner was released from the guardianship in respect of the said son who attained majority in the meantime.

In the petition in question she has stated that the property of the minor daughter namely Sita Kumari Khobragade was a family pensioner of her deceased father and which was credited in her account.

Statement of the bank account has been filed.

The minor daughter has appeared before this Court stating therein that she has attained her majority on 18.03.2013. She has personally operated the account but she has no position to withdraw the arrear pension amount deposited on 26.02.2016. She prayed to release the petitioner from her guardianship. She has also filed certificate of her birth showing the date of birth as on 18.03.1995 and the statement of the account.

In this circumstances, this Court thinks that there is no further requirement to require the guardian to stay in her possession or control relating to any past or present property of the ward, with the happening of the attending majority, authority of the guardian seized automatically.

Now in view of the attending majority of Sita Kumari Khobragade who was born on 18.03.1995, who eventually has become major in the meantime. The petitioner is hereby released from the guardianship in respect of the said major Sita Kumari Khobragade who accordingly is hereby entitled to deal with dues as available on

her account to her own desire.

Dictt and Corrt by me

D.J.

District Judge
Paschim Medinipur

J. Misc 16/2002

Order No. 91, dated 15.02.2017

Today is fixed for hearing of the petition dated 07.06.2014 under order 1 rule 10 filed by one Kakali Roy and Kalyaneswar Roy praying for order so that they may be **impleaded** in this case to highlight how the Sebait or his son is misusing funds under the veil of Court's order.

It appears from the record that on 09.04.2003, this Court allowed the prayer exparte and permitted the petitioner of that J. Misc case to sell the land described in the schedule property. Thereafter, one amendment petition was filed by as many as eight petitioners praying for permission to sell the schedule property mentioned Debuttar property being Sabait of the said deity. That petition is pending for hearing, in the meantime this petition has been filed.

The petitioner of that pending amendment petition filed a written objection against this petition for hearing stating therein that all the allegations against him are false and concocted and there is no reason to add them as parties.

Ld. Lawyer against this petition submitted that in view of Order 1 rule 10 of the C.P.C, this petition is not maintainable. One petition is pending for substitution of the son of the appointed Sebait unless he is appointed in this case, this petition cannot be heard and this petitioner has no status to be impleaded as party.

By the order permitting one person to sell Debotyo property and some trust is imposed upon him. Since after imposing trust no account has yet been furnished whatever may be reason. Whoever comes forward with bona fide intention to protect interest of the deity as to

aid the Court for betterment of the deity is necessary of this suit in the wide context because this Court being guardian of the deity is to protect his interest on reasonable cost without usurping bona fide interest on others.

Contd.....

In this circumstances, so far claim of the petitioner is found bona fide is necessary for further hearing of the suit on any point.

Hence, the prayer is allowed.

This petitioner is impleaded in this case as Respondent No 1 & 2.

Amend the plaint accordingly.

Dictt and Corrt by me

D.J.

District Judge
Paschim Medinipur

Cr. Rev. 614/2015

ORDER NO.9
07.02.2017

Today is fixed for awaiting LCR.

Both parties file their respective hazira.

LCR is received on 07.02.2017. Let the case be fixed for hearing

Fix 21.02.2017 for hearing and order in presence of both sides.

Sessions Judge
Paschim Medinipur

ORDER NO.10
21.02.2017

This Civil revision arises against the order passed by Ld. Executive Magistrate, Kharagpur on 07.08.2015 in petition case No. 372/2015.

The revisionist has alleged that order in question is totally improper and unjust. The Ld. Court below has done mistake in directing the parties to maintain the peaceful possession of the property without any report from B.L. L.R.O. and O.C.

Now the question is whether the said order under challenge is proper, correct and it does not suffer impropriety.

DECISION WITH REASONS

It appears from the record itself that the order was passed on 07.08.2015 and at present it has got no binding effect. So no interference into the order will be futile. In this circumstances, this Court thinks that no elaborate order is needed in disposing of this revision.

Hence, it is

ordered

that the misc case be and the same is hereby dismissed on contest.

Let a copy of this order along with L.C.R. be sent to the Ld. Court below for information.

Dictt and Corrt by me

S.J.

Sessions Judge
Paschim Medinipur

°RDER °O.8, DATED 28.02.2017

Today is fixed for hearing on the petition dt. 19.01.2017 filed by Sri Pranabesh Das, the petitioner of this case.

Petitioner is present with his Ld. Advocate.

Opposite Party files a petition for adjournment but at the time of hearing, Ld. Advocate of both sides advanced their argument of the petition mentioned above.

Perused the application for visitation of the child.

The background of the facts are as follows :-

The petitioner and the Opposite Party are married couple and their marriage was solemnized on 15.02.2006 according to Hindu Rites and Ceremonies and from their wedlock a male child namely Saptak Das was born. Saptak Das is now a student of class V of Rahara Ramkrishna Mission School, aged about 9 ½ years.

Saptak Das was admitted in the aforesaid academic institution by his respondent mother. Hence, she has access to her child to see her son but the petitioner father was not allowed by school authority to meet his son in the school or hostel premises of Rahara Ramkrishna Mission School.

Hence, the conflict. To revolve the dispute, the father of the child has submitted the present application for a direction to meet his son.

It is not in dispute that Sri Pranabesh Das and Soma Das (Dey) are married couple and from their wedlock a male child namely Saptak Das was born. It is also an admitted fact that Saptak Das is a student of class V of Rahara Ramkrishna Mission School.

It is true that various cases are pending between the parties and for that reason Saptak Das must not suffer. He has got a chance to continue his studies in a reputed school of West Bengal. He has got a chance to carry on his day to day lessons within the divine ambience of Rahara Ramkrishna Mission School. But for his all-round development parental care and affection is a must.

Contd.....

(2)

Respondent mother has been visiting her son in the school/hostel premises of Rahara Ramkrishna Mission School, certainly within the rule and regulations of that school.

Ld. defence counsel for the petitioner submitted that the school

authority did not allow the petitioner to meet his son within the school/hostel premises. But in my considered view for the well being, and for the nourishment of his mental faculties, he must not be deprived of his fatherly affection also.

Upon such consideration, it is ordered that the application for right to visitation dated 19.01.2017 filed by petitioner is allowed on contest but without any cost.

The school/hostel premises authority of Rahara Ramkrishna Mission School is directed to allow the petitioner Sri Pranabesh Das to meet his son Saptak Das once in a week at any time as per convenience of the school authority and on any day until further order.

Sri Pranabesh Das is hereby directed not to create any hindrance or untoward incident within the school or hostel premises while visiting his son.

Fixfiling of Written Statement.

Dicth and Corrt by me

D.J.

District Judge
Paschim Medinipur

16, DTD.16.03.2017

Today is fixed for hearing of the petition praying for inspection of disputed will filed by Defendant No. 1.

Ld. Lawyer for the petitioner is present. He has no objection. He submits that this is an old pending case. The Defendant is not filing W.S and for that reason the hearing of the case is dragged.

Heard both sides.

The prayer for inspection of will is allowed.

Inspection will is fixed on 18.04.2017 at 1:30 pm.

Sheristadar, the custodian of the will is hereby directed to give opportunity to the Defendant to inspect the will within strict purview of C.R.O

The Defendant is further directed to submit W.S within 15 days from the date of inspection of will.

Dictt and Corrt by me

D.J.

District Judge
Paschim Medinipur

I have filed my examination in chief supported by an affidavit on 17.09.2016. I am the petitioner No 1 of this case. Petitioner No. 2 is my married wife. We married on 09.05.2009 as per Hindu Rites and Custom. We resided together as husband and wife for 2 months. We could not reside for long period more than 2 months. Since that time we started living separately. Both of us filed this petition jointly for divorce on mutual consent. On first occasion she was present. She signed joint compromise petition voluntarily in my presence and also in presence of her Ld. Advocate. I cannot say why she is not attending Court. She has intended to send message that she had withdrawn her consent to mutual divorce. Our coexistence and cohabitation is almost impossible. There is no way to start our conjugal life with her. In this circumstances, we had prayed for divorce on mutual consent. My prayer is bona fide and free from any collusion at the time of filing this petition. She had full voluntary consent.

Dictt and Corrt by me

D.J.

District Judge
Paschim Medinipur

t. a 112/2013

15, DTD, 16.03.2017

Today is fixed for hearing of the petition u/s 5 of the imitation Act filed by the Plaintiff/Appellant.

It appears from the petition and the submission that there is 173 days delay in filing the appeal and it has been stated both in the petition and the submission that due to laches in entering on the date of judgement in the cause list, the Plaintiff did not aware of the date of the judgement and whenever it was delivered, he was not informed by anybody about the date of judgement and whenever he was informed, he prayed for certified copy of the same. It appears from the judgement/order impugned that it was passed on 12.04.2013 and the decree was drawn on 11.07.2013.

Ld. Lawyer for the Respondent/Defendant is absent on repeated calls though he files haziran.

This Court is of the opinion that so far delay is concerned there should be lenient view to permit the party to contest the suit both in lower and upper forum too.

In this circumstances, prayed for condonation is considered and allowed considering the ground mentioned therein is somehow sufficient.

The Limitation is hereby condoned.

The appellant files haziran. Today is fixed for admission of the appeal.

Heard the Ld. advocate for the appellant. He has moved the petition for admission of the appeal.

Perused the case record and certified copy of the judgement dtd. 12.04.2013 and decree dtd. 11.06.2013 passed by the Civil Judge (Sr. Div.), 1st Court, Paschim Medinipur in T.S. Case No. 370/2006 along with certified copy of the impugned order. It appears that the appeal is filed within time and so the appeal is admitted.

Issue notice upon the respondent. Requisite at once.

Call for LCR.

Fix LCR.

Dictt and Corrt by me

D.J.

District Judge
Paschim Medinipur

OFFICE OF THE DISTRICT JUDGE, PASCHIM MEDINIPUR

No.

Dated, 16th March, 2017

From : The Ld. District Judge,
Paschim Medinipur

To : Smt. Sulagna Dastidar
Additional District & Sessions Judge, FTC 2nd Court
Paschim Medinipur.

With reference to your memo No. 304 dt. 28.02.2017, in which you have prayed to allow you to draw excess amount of house rent along with H.R.A for occupying accommodation on rent at Saratpally due to non-availability of government quarter.

I am to state that you are well aware of the fact that my predecessor in chair allotted you one residential quarter and also did not allow you to draw any H.R.A. and whenever you prayed for drawing excess house rent to my predecessor in chair, he referred it to the government. You are also aware of the fact that embargo of drawing H.R.A. was withdrawn by present District Judge on 01.02.2017 after vacating previous allotment order of quarter in your favour.

In this circumstances, the undersigned is not in a position to allow you to draw excess house rent allowance for the month of September, October, November and December, 2016 and January, 2017.

You are requested to bear with the inconvenience.

District Judge,
Paschim Medinipur

I have filed this petition praying for guardianship of the minor both in respect of the person and property. I have filed my examination in chief supported by an affidavit. The ward is the daughter of my predeceased daughter. Father of this ward died long ago. Nobody is there to look after her. My prayer is bona fide and true. I shall take all steps and care to protect her interest of both person and the property. I have filed all necessary papers as per firisti.

The death certificate of Venkata Ramana is marked as exbt 1.

The death certificate of Sarada is marked as exbt 2.

The birth certificate of Liketha is marked as exbt 3.

The railway letter No. SER/P-KGP/WS/SETT/661/2846 is marked as exbt 4.

Dictt and Corrt by me

D.J.

District Judge
Paschim Medinipur

19.03.2017

09, DTD, 18.03.2017

The appellants file hazira. Today is fixed for admission of the appeal.

Heard the Ld. advocate for the appellants. He has moved the petition for admission of the appeal.

Perused the case record and certified copy of the Judgement dtd. 14.12.2015 and decree dtd. 23.12.2015 passed by the Civil Judge (Jr. Div.), 1st Court, Paschim Medinipur in T.S. Case No. 153/2008 along with certified copy of the impugned order. It appears that the appeal is filed within time and so the appeal is admitted.

Issue notice upon the respondents. Requisite at once.

Call for LCR.

Fix for SR and LCR.

Dictt and Corrt by me

D.J.

District Judge
Paschim Medinipur

Misc appeal.81/2015

12, DTD. 20.03.2017

The petition dtd 09.12.2016 filed by appellant is taken up for hearing in which they have prayed for expunging the name of the Respondent No. 4, 5 & 6 from the cost title of this appeal.

He has stated despite serving notice upon them that these unnecessary and unwilling parties are not attending the Court and for that reason their name may be expunged. As per report all those Respondent No. 4 to 6 died in the meantime.

Ld. Lawyer for the appellant No. 1 is present. He has got no objection.

It appears from the record that they are the proforma opposite parties and they are subsequent transferies. In this circumstances, the prayer is allowed.

Let the name of the Respondent No. 4 to 6 be expunged from the cost title.

To admission hearing.

Dictt and Corrt by me

D.J.

District Judge
Paschim Medinipur

The defacto complainant, Dipak Mondal is my father. I am now pursuing my studies. I am a student of class X. On 18.02.2015 Gobinda Adhikary S/o Dilip Adhikary kidnapped me on the way while I was going to bank at 9 am. The bank was situated at Fatesimpur. I was kidnapped in front of the bank. I was going to the bank on that occasion to withdraw my deposited money in the scheme of 'Kanyashree'. Accused, Gobinda Adhikary is present on dock today and another accused present on dock is the father of Gobinda (identified). That accused, Gobinda Adhikary took me to Kolkata from that place by train. I was detained there for three days. My father lodged one complaint with the police against that kidnapping and police arrested Gobinda Adhikary and recovered me from Chandrakona Road. I was recovered after three days from kidnapping. On the next day, I was taken to Garhbeta P.S and from there I was taken to hospital. But I refused to undergo medical checkup. This is my signature on the undertaking that I was not willing to undergo for my medical checkup. This signature is marked as “XBT NO.1. On the same day while I was taken at Garhbeta P.S. on the way people of Gobinda Adhikary asked me to say before the Court that I had relation with him and I called him over phone and I along with him went voluntarily. My statement was being recorded by Ld. Magistrate and I stated all those things as I was told so by Gobinda's people. I signed that recorded statement whenever it was read over and explained to me. These are my three signatures appearing on the said statement recorded by Ld. Magistrate. Those three signatures are marked as “XBT NO. 2, 2/1 & 2/2. I went to my father's house from the Court. I was

Contd.....

(2)

interrogated by police and I stated all those things. While I was so taken, I was 16 years old and was a student of class X. My date of birth is on 27.11.1999.

CROSS-EXAMINATION

There are dwelling houses, shops including markets in the P.O locality. The way leads to the P.O. place from my house remains busy with pedestrian. There were many people and passengers at the station while I was so taken. Police personnel also are posted there. There were persons in the compartment in which I was taken. No other person was present while my statement was recorded by Ld. Magistrate. Days in between my alleged recovery and production before my father, I was in custody of police. Before jotting down my statement Ld. Magistrate asked me few questions including whether I was tweetered by any person or not and I stated to Ld. Magistrate in reply to that question that nobody tweetered me. I did not state any lie to Ld. Magistrate to all those questions. I go to my school from my house riding by bicycle. Usually, I go to school with my another friend and occasionally I go alone. I signed the statement after reading the same as well as after it was read over and explained to me. It is found written in the statement that my guardian settled my marriage against my will. There is also statement from my mother that Gobinda Adhikary had no fault. I did not lodge any complaint or my father did not lodge any complaint over the alleged fact that while I was taken to Court, the people of Gobinda Adhikary tweetered me what to say. I am saying these aspects for the first time that I was so kidnapped by this accused and I was taken to Kolkata. I was recovered from Chandrakona.

Not a fact that the accused Gobinda Adhikary did not kidnap me and did not take me to Kolkata and I was not so recovered by police.

Not a fact that people of Ghobida Adhikary did not tweeter me to stay any untrue statement.

Dictt and Corrt by me

S.J.

Sessions Judge
Paschim Medinipur

I know both the accused persons present on dock (identified). I know Dipak Mondal and his daughter Dipika Mondal. While on 18.02.2015 said Dipika Mondal was going to bank at 9 am, she was kidnapped there from by this accused, Gobinda Adhikary. Police interrogated me.

CROSS-EXAMINATION

I did not witness the incident of kidnapping. I am stating that statement and also stated in my examination in chief

Not a fact that Gobinda Adhikary did not kidnap her.

Dictt and Corrt by me

S.J.

Sessions Judge
Paschim Medinipur

I know Dipak Mondal. He is my co-village. I know his daughter, Dipika Mondal. I know the accused persons present on dock. I heard that Dipika Mondal went with one boy of Karkata village. These accused persons are the men of Karkata village. I do not know how they are connected with this case.

CROSS-EXAMINATION

I am stating all these statements relating to this case for the first time.

Dictt and Corrt by me

S.J.

Sessions Judge
Paschim Medinipur

01, DTD, 20.03.2017

Today is fixed for consideration of charge.

All these accused persons on CB are present by filing haziran with their Ld. Defence counsel.

Ld. P.P in charge of the case is present.

Ld. P.P opens the case of the prosecution by describing charge and brought against the accused and stated what evidence he proposes to prove guilty of the accused.

After considering the materials of fact and the statement stated by the Ld. P.P to the accused persons and hearing of both parties, this Court is of the opinion that there is ground for presuming that the accused persons have committed offence which are punishable u/s 498A/307/323/34 I.P.C and 3 & 4 D.P. Act.

The charge is read over and explained to the accused persons and each of the accused is asked whether he pleaded guilty of the offence charged or claimed to be tried. " All the accused persons individually pleads guilty and claims to be tried.....".

The following schedule is fixed for examination of Charge Sheet witness :-

Fix 17.04.2017 for evidence of CSW witness 1,2,3.

Fix 18.04.2017 for evidence of CSW witness 4,5,6.

Fix 19.04.2017 for evidence of CSW witness 7,8,9.

Fix 20.04.2017 for evidence of CSW witness 10 & 11.

Fix 21.04.2017 for evidence of CSW witness 12 and remaining.

Issue summons accordingly.

Accuseds are as before.

Ld. P.P is directed to ensure attendance of the witnesses.

Dictt and Corrt by me

S.J.

Sessions Judge
Paschim Medinipur

688/20

This is a criminal revision u/s 397/399 Cr.P.C filed by revisionist challenging the orders dated 05.09.2016 & 30.10.2016 passed by Executive Magistrate in a proceeding u/s 144 (2) Cr.P.C.

Today is fixed for appearance of both parties and further order.

Both parties file hazira but on repeated calls all the revisionist are absent.

It appears from the Revisional petition that the Ld. Executive Magistrate passed two orders in connection with the petition case No. 334/2016 in which the Ld. Executive Magistrate directed the parties to maintain peace and tranquility over the issue.

Being aggrieved at and dissatisfied with the said order, Revisionists have preferred this appeal on different grounds that the order is not tenable in law.

It is pertinent to mention here that there is no specific ground for which they have preferred this relief only they have prayed for setting aside those orders.

Now the question is whether the orders impugned are sound proper and correct as well as whether those orders do suffer from any irregularities?

Ld. Lawyer for the O.P is present with the submission that both the orders impugned under challenge are interlocutory and there should not be revision against those orders.

It appears from the order dated 05.09.2016 that the Ld. Magistrate only directed to maintain peace and tranquility over the issue. On 03.10.2016 there is no effective order only the petitioner filed haziran and no report was issued. It appears from the relevant section that the Ld. Executive Magistrate is empowered to issue order in urgent cases of nuisance and apprehended danger. In no way this Court finds those orders are against the empowerment or it is transited power empowered to him that order is correct and not suffer from impropriety and there is no jurisdictional error too.

Hence, this Court is of the opinion that this Revisional Court does not find any scope or reason to interfere into the order impugned under challenge.

Hence, it is

ORDERED

that the case be and the same is hereby dismissed without cost.

The orders impugned are left uninterfered.

Let a copy of this order be sent down to the Ld. Trial Court for necessary action and information.

05, DTD, 16.03.2017

Today is fixed for hearing of the petition u/s 13 B of H. M. Act filed by petitioners on 11.03.2016.

They have filed this joint petition supported by an affidavit stating therein that their marriage was solemnized on 09.05.2009 in accordance with Hindu Rites and Custom. After that marriage they started living as husband-wife for three month and one female child was born to the wedlock on 07.05.2014. During their that cohabitation their dispute differences maladjustment went up to that extent which compelled them to live separately from 10.08.2009 and despite their best endeavour and even at the intervention of their well wishers that differences could not be dissolved and that marriage tie has totally broken down where from no return was possible and for that reason they have mutually agreed to dissolve their marriage tie by means of decree of divorce on compromise. Accordingly, they have filed joint petition on 11.03.2016. Thereafter, on 17.09.2016 was fixed for hearing of the petition and husband/ petitioner filed his affidavit in chief on the said date whereas that wife/ petitioner No. 2 did not appear and remained absent without step. Thereafter, two intervening dates were fixed for their presence and necessary action but on both the occasions petitioner/ wife was absent without any step. Today the petitioner/ husband is present. His examination in chief is taken into consideration and his examination in chief was resumed this day. Having regard to absence of this wife/petitioner No. 2 of all subsequent dates, this Court is to decide whether in her absence or whether this petition for mutual divorce should be entertained or not. In this factual premises, Ld. Lawyer for the Respondent/husband submits that this Court is to satisfy whether both parties had mutual consent at the time of filing of the petition praying for decree of divorce on compromise. After filing of that petition no party should be allowed to withdraw his/her consent unilaterally and if Court is satisfied with the fact at the time of filing of the case both parties were free from any duress and coercion or misconception. The decree of divorce may be accorded in accordance with filing of the petition.

With a view to fortify that submission, he relies upon and refers to kind observation of Hon'ble High Court, Calcutta reported in 95 CWN page 95. It appears from the kind observation dated 10.12.1990 of his Lordship that on the date of hearing wife/ petitioner was not present whereas her Ld. Lawyer was present. In this circumstances, his Lordship was pleased to agree the prayed for decree of divorce on mutual consent. But he has also referred to and relies upon the kind observation reported in AIR 1992, Supreme Court page 1904. After going through the kind observation, it is palpably clear in the circumstances as appearing in this case, their Lordships were of the kind opinion that prayed for decree for dissolution of marriage on mutual consent should not be granted and their Lordships were further pleased to set aside the decree of dissolution of marriage passed in similar circumstances. In this factual premises and the legal position, this Court does not incline to allow the prayed for decree of

divorce on mutual consent in absence of the petitioner/wife and her Ld. Lawyer.

Hence, the prayer for mutual divorce is **REJECTED**.

Dictt and corr by me

D.J

District Judge
Paschim Medinipur

31.DTD.17.03.2017

Today is fixed for hearing of three petitions out of those petition dated 31.07.2013 filed by one Swapan Kumar Pan is taken up for hearing in which he has prayed for permission to contest the case as added Respondent.

Ld. Lawyer for the Respondent appears with a Vokatnama and submission that he has no objection against the said petition.

Before going for discussion over petition, this Court intends to depict the backdrops of this petition. This petitioner and the appellant are inhabitants within the jurisdiction of Chandrakona Municipality. Chandrakona Municipality Authority served notice upon the appellant in continuation of their earlier notice along with proceeding of the Board of Council dt. 04.09.2012. From that proceeding, it appears that at the instance of this present petitioner, the Municipality Authority and Another Authority started proceeding against the appellant for illegal construction and thereafter, they also directed him to demolish illegal construction.

On being aggrieved at and dissatisfied with the said order, the appellant has filed this appeal.

Ld. Lawyer for the petitioner who wants to be added as Respondent, submits that in connection with this case he has moved before Hon'ble Court on different occasions and it could be had from the filed papers that Hon'ble High Court, Calcutta was please to direct him to appear before this appeal Court to contest the case.

In these aspects, he refers directions of Hon'ble High Court, Calcutta dated 11.06.2012 passed in WB 10296 (W) of 2012, order dated 03.07.2013 passed in Mat No. 419/2013 and others. From other papers it appears to this Court that it is the petitioner at his instance that the proceeding against the present appellant was started and all the initiatives were taken at the instance of this petitioner and Hon'ble High Court, Calcutta was also pleased to hold in order dated 03.07.2013 passed in Mat No. 219/2013 as follows,

"We do not know whether his client has been made party thereto but his client is entitled to raise objection on that score, he is so was advised before appellant authority".

Ld. Lawyer for the appellant submits that all along this petitioner is trying to harass the appellant by different means. This appeal against the Municipality and there is no direction from the Municipality that this petitioner is anyway necessary party for the disposal of this case. What is the locus standi of this petitioner to be impeaded in this case as Respondent to contest the appeal. He also further submits that the prevision of order 1 rule 8 (a) is not applicable in this case as it is not suit but an appeal.

Ld. Lawyer for the petitioner submits that in view of order No. 41 (14)(4) C.P.C there is no bar to add any person to contest the appeal even if he was not the party to the initial proceeding.

Apart from of legal complicated, this Court comes to a conclusion that the proceeding in question was initiated at the instance of the petitioner. He knocked before different authorities and also before the Hon'ble High Court, Calcutta over the issue and their Lordships were of the kind opinion to allow this petitioner to contest the case before the appellant Court.

The procedural aspect is meant for rendering fair, justice to both ends. In this case, the presence of the Respondent is found necessary to unearth the truth. That apart from the entire incident, it appears that this petitioner has got immense interest for getting that illegal construction demolished for the betterment of the society or of the locality, if at all any illegal construction is found there. In view of these aspects, the prayed for permission on behalf of Swapan Kumar Pan is allowed.

Let he be added party as Respondent No. 3.

Amend the cost title of the same accordingly.

Dictt and corr by me

D.J

District Judge
Paschim Medinipur

08, DTD, 17.03.2017

Today is fixed for hearing of two petitions. Petition dated 21.12.2016 filed by appellant praying for necessary order expunging the name of the Respondent No. 1 Malati Daw who has died on 03.12.2016 leaving behind one son and three daughters.

Appellant has further stated that all these heirs left behind by that Respondent are already on record. Accordingly, no substitution is necessary.

Ld. Lawyer for the Respondent appears with the submission that one son and three daughters are on record but she has left four daughters and that forth daughter is not on record and she has to be brought on record.

On this question, Ld. Lawyer for the appellant submits that so far their knowledge goes she has left three daughters not four, if at all she has another daughter then she will be added in due course after obtaining necessary information.

In this factual circumstances, the prayed for order expunging the name of the Respondent Malati Daw is allowed. Let her name be expunged from the memo of appeal.

Another application dated 21.12.2016 filed by the appellant is also taken up for hearing in which he has prayed for amendment of the plaint. He has further stated that the prayed for amendment is formal in nature and it is bona fide for proper adjudication of the suit.

Respondents file objection petition thereto as per submission of both parties. This petition is kept for hearing along with appeal.

Fixfor further hearing.

Dictt and corr by me

D.J

District Judge
Paschim Medinipur

The necessity to pass the order arises from the fact that the Ld. Additional District & Sessions Judge, 1st Court, Jhargram, Paschim Medinipur has sent back the case No. s. t. fliffⁿOVEMBER/2006 with order dated 17.01.2017 and letter No. 135 dated 20.02.2017.

The accused on interim bail is present.

It appears from the letter No. 135 dated 20.02.2017 and order No. 101 dated 17.01.2017 that the said Ld. Additional District & Sessions Judge, 1st Court, Jhargram, Paschim Medinipur in course of continuation of the trial has come across to the fact that Sri Bibhas Chatterjee, who is now presently posted at Jhargram to the post of Additional District & Sessions Judge, 2nd Court, Jhargram, Paschim Medinipur, he recorded one statement u/s 164 Cr.P.C of one witness in connection with this case while previously Sri Bibhas Chatterjee was posted there to the post of Ld. Judicial Magistrate. Jhargram, Paschim Medinipur. Sri Bibhas Chatterjee happens to be the husband of the present P.O. On that score, the present P.O has found some personal inconvenience to go on acting as P.O of this case under trial.

Having regard to the fact that she has directed the accused to appear before this Court this day and also send the entire case record before this Court with a prayer for withdrawal of this case from the file of that Court.

It is true, that aspect which has been stated by the P.O, may be some personal inconvenience to her and she may have faced some difficulties to preside over this case for that reason.

Legal aspect is that, the power of Ld. Session Judge to withdraw of the case is strictly regulated by section 409 Cr.P.C and in view of section 409 (2) Cr.P.C, Ld. Sessions Court have the power to withdraw any pending case from the Ld. Additional District & Sessions Judge at any time before commencement of trial of the case. But in this case trial has been commenced.

In this circumstances, this Sessions Court is not in a position to accord the prayer of Ld. Additional District & Sessions Judge for withdrawing of the case from her Court.

In this circumstances, her prayer is considered and **REJECTED**.

Interim bail of this accused person is extended till 27.04.2017.

Let the case record along with all exhibited documents and the copy of this order be returned to Ld. Court with a request to take necessary step for transfer of the case in accordance with law if she remains stick to the point that it is difficult to her or inconvenience to continue the case as P.O.

Surety is directed to produce the accused on bail before that Court on 27.04.2017.

Dictt and corr by me

S.J

Sessions Judge
Paschim Medinipur

This is a petition under Act VIII. The petitioner Bada Kamala W/o Lt. Bada Chitti Babu resident of quarter No. L-24/37 Unit No. 02 Jaihind Nagar P.S Kharagpur (T), Paschim Medinipur has filed a petition stating therein that she is the grand mother (mother's mother) of Ku Liketha. She was born on 01.02.2001. She is the daughter of petitioner's daughter, Smt. Sarada and her husband, Venkata Ramana. Smt. Sarada died on 20.06.2001 and Vankata Ramana died on 16.01.2014. Since after their death, the minor daughter of that couple is living under her custody. She has got no another relative to look after her. Venkata Ramana, S/o Lt. Haranadh, the father of the minor used to work as a technician Gr-II, ticket No. 31275 in S-E Railway Workshop No. 31 of Kharagpur. Subsequent upon his death of said Venkata Ramana, the minor daughter becomes entitled to get of post death benefit that is all settlement dues and family pension and also employment assistant of compassionate ground being sole legal heirs of deceased Venkata Ramana. All the dues in the name of the said Venkata Ramana payable to said Ku Liketha is lying in the custody of the work shop of personal officer of S-E Railway at Kharagpur. In order to get payment all the dues standing in the name of the father, the petitioner require to produce non-natural guardian certificate of the said minor Ku Liketha from the competent Court of law. Railway Authority has served a notice to that effect upon the petitioner in the address given above. In course of hearing, the petitioner has adduced evidence as PW1. He has filed death certificate of Venkata Ramana issued from Kolkata Municipality Corporation, certificate of death of Sarada W/o Venkata Raman and certificate of birth of ward and the original notice which have been served upon the petitioner and those documents have been marked as exhibit No. 1,2,3 & 4. After going through the materials on record and evidence of the petitioner on oath, it appears that this petitioner resides in the given address and the said minor daughter Ku Liketha resides under her custody and that minor daughter is the daughter of Sarada and Venkata Ramana. They have died on 22.06.20001 and 16.01.2014 respectively. It appears that the Assistant Personnel Officer (G) for Workshop Personnel Officer vide his letter No. SER/P-KGP/WS/SETT/661/2846 dated 13.08.2016 that the said minor daughter was directed to obtain non-natural guardianship certificate.

IN THE COURT OF LD. DISTRICT JUDGE, ASCHIM MEDINIPUR

Santanu Ghosh..... Petitioner

Vs

The United India Insurance C. Ltd & others..... O.Ps

ADMINISTRATIVE ORDER NO. 04

DTD. 28.03.2017

This is a petition filed by one Santanu Ghosh praying for transfer the M.A.C. Case No. 436/2014 pending before Ld. Additional District & Sessions Judge, Rd Court, Paschim Medinipur to any other Additional District & Sessions Judge, Paschim Medinipur on the ground that the P.O of this Court has been transferred.

Perused the petition.

Heard both sides.

Since that Court is vacant and as per notification there is no chance of joining P.O of that Court before June, 2017.

Hence, the prayer for transferring the case is considered and allowed.

The case record is withdrawn and transferred to the Court of Additional District & Sessions Judge, 6th Court, Paschim Medinipur.

Inform the Court concerned for taking necessary action in the matter.

The Additional District & Sessions Judge, Rd Court, Paschim Medinipur is requested to send the said case record after observing the formalities.

District Judge,
Paschim Medinipur
28.03.2017

OFFICE OF THE DISTRICT JUDGE, ASCHIM MEDINIPUR

Memo No...../.....

Dated, Paschim Medinipur, the 28th day of March, 2017

Copy forwarded for information and taking necessary action :-

1. The Additional District & Sessions Judge, Rd Court, Paschim Medinipur.
2. The Additional District & Sessions Judge, 6th Court, Paschim Medinipur.

District Judge,
Paschim Medinipur
28.03.2017

IN THE COURT OF LD. DISTRICT JUDGE, PASCHIM MEDINIPUR

Sankar Mana..... Petitioner
Vs
Ashutosh Mandal and others..... O.Ps

ADMINISTRATIVE ORDER NO. 05
DTD. 28.03.2017

The petitioner Sankar Mana has filed this petition praying for withdrawal of M.A.C Case No. 532/2014 pending before Ld. Additional District & Sessions Judge, FTC, 3rd Court, Paschim Medinipur on the ground that this Court is vacant and the claimant has become cripple. Speedy compliance is required for his treatment.

Hence, his prayer is considered and allowed.

The case record be withdrawn from the Court of Ld. Additional District & Sessions Judge, FTC, 3rd Court, Paschim Medinipur and transferred to the Ld. Additional District & Sessions Judge, 6th Court, Paschim Medinipur

Inform the Court concerned for taking necessary action in the matter.

The Additional District & Sessions Judge, FTC 3rd Court, Paschim Medinipur is requested to send the said case record after observing the formalities.

District Judge,
Paschim Medinipur
28.03.2017

OFFICE OF THE DISTRICT JUDGE, PASCHIM MEDINIPUR

Memo No...../.....
Dated, Paschim Medinipur, the 28th day of March, 2017

Copy forwarded for information and taking necessary action :-

3. The Additional District & Sessions Judge, FTC 3rd Court, Paschim Medinipur.
4. The Additional District & Sessions Judge, 6th Court, Paschim Medinipur.

District Judge,
Paschim Medinipur
28.03.2017

I am the father of the minor. I have filed this case on behalf of the said minor praying for permission of the sell property stands in his name and description of the property mentioned. I have filed my examination in chief supported by an affidavit. The property was purchased by my father on behalf of my minor. It is marked as **EXBT 1**. This is the LR ROR of the said plot, marked as **EXBT 2**. This the rent receipt of the property marked as **EXBT 3**. This is the pre-estimation of the sell price of the property. This is the school admit card of my said son issued by West Bengal Board of Secondary Education, marked as **EXBT 4**. I in accordance with direction of the Court I got published the case in a local news paper, Sabyasachi dt. 20.07.2017. This is the portion of the same marked as **EXBT 5**. My prayer is bona fide.

Dictt and Corrt by me
D. J.

Medinipur.

District Judge
Paschim

¶ROSS-EXAMINATION OF d.fl. -1 IS RESUMED TODAY I.E ON 1ST APRIL, 2017

It is true that the petitioner of this case is a patient of stroke and his left limbs are inactive.

It is not a fact that the petitioner of this case tried time and again to visit my daughter but I did not allow him.

It is not a fact that since after the birth of my daughter, the petitioner of this case and his relatives did not inflict torture upon me as I alleged.

It is not a fact that the petitioner of this case took my daughter and got her admitted in a school while we were posted at Jhargram. I did not feel any necessity to take permission from the petitioner of this case prior to removal of my daughter from Jhargram school to Midnapore school.

It is not a fact that while my daughter was a student of Jhargram school, the petitioner of this case bore all her school expenditure including convenience.

It is not a fact that neither the petitioner of this case or his relatives did not asper me as witch.

It is not a fact that the petitioner of this case was present with me while I was undergoing treatment at Labbik Hospital and R.G.Kar Hospital at Calcutta.

It is not a fact that the petitioner of this case arranged and paid all the expenses for my treatment at Chennai.

It is not a fact that my contention as stated in para 13 of my examination in chief is totally false.

Still my daughter is minor, I am not ready to allow the petitioner of this case to my residence for visiting my daughter.

It is not a fact that the petitioner of this case tried to keep my daughter in well place and happy but I always misled my daughter. I will not take any initiative of my own to facilitate meeting in between my daughter and the petitioner of this case.

Contd.....

Our marriage tie has been dissolved as per my prayer. There is my personal objection if the petitioner of this case wants to give any gift etc. to my daughter but I have no objection if my daughter is ready to accept the same.

It is not a fact that I left the petitioner of this case as he became ill.

It is not a fact that I took my daughter away as he became ill and I did not allow my daughter to meet him as he became ill.

Dictt and Corrt by me
D. J.

Medinipur.

District Judge
Paschim

t. s 92/2012

26, DTD. 01.04.2017

Today is fixed for admission of title appeal.

Ld. G.P is present.

Despite filing haziran on behalf of other sides, they are absent on repeated calls. Now it is 3:15 pm .

The record goes to show that the title appeal was filed on 14.09.2012 along with petition u/s 5 of the Limitation Act and after long delay caused from both ends petition could be taken up for hearing and thereby the Limitation was condoned subject to payment of cost and after payment of cost, appellant is found absent of several dates neither without step or even without taking steps and this day also despite taking step he is absent on repeated calls.

The entirety of the record goes to show that this appellant has lost his interest in the appeal and there is no justification to drag this case at the cost of judicial our.

Hence, the prayer for admission of the appeal is rejected.

Dictt and Corrt by me
D. J.

Medinipur.

District Judge
Paschim

J. Misc 15/2016

This is an application dtd. 09.01.2016 u/s 7 of the Guardianship and Minority Act filed by one Satyeswar Mondal on behalf of his minor son namely Harekrishna Mondal. He has prayed thereby for permission to sell the

property stands in the name of the said minor son and the details of the said property has been mentioned in the schedule as District-West Midnapore, P.S Pingla mouza Jamna, J.L No. 33, LR Khatiyon No. 956 plot No. 895 to the extent of 1 ½ decimal.

It appears from the application that the petitioner Sayestwar Mondal happens to be the father of the minor and the property mentioned therein was purchased in the name of the minor on 20.01.2003 by virtue of registered deed of sale. That deed has been marked **EXBT 1**. The supporting L.R R.O.R, in respect of the schedule property has been marked **EXBT 2**. It appears from the **EXBTS 1 & 2** that the portion of the property was purchased on behalf of the minor and that has been duly recorded in the settlement record.

The record goes to show that while property was purchased, there were other co-purchasers in the said deed in respect of the said property and those co-purchasers are mother of the minors and uncle and aunt. It has been stated by the applicant that the property has turned into non-profitable property and he finds difficulty to look after the property on different grounds. In the premises of the fact one person has come forward to purchase the portion of the property as mentioned in the schedule against payment of Rs. 1,00,000/- which is the share of the minor in the plot. He has stated that at the time of filing of the case, the age of his minor son was 15 years and he was a student of Science Stream. That amount which may had from the sell of his share may be utilized to defray his expenditure towards his studies. The rent receipt has been marked **EXBIT 3**, and school admit card of that minor has been marked **EXBT 4**. It reveals from the school admit card that the applicant is the father of the said minor and his date of birth is 13.04.2000 and he was a candidate of Secondary examination in the year 2015. The E-assessment slip of the same marked **exbt 3/ 1**. There is notification as well as publication as to the prayer published in local daily Bengali newspaper namely Sabyasachi dt. 02.07.2016. Despite that publication no person has come forward with any rival contention or to contest this application on any count. This petitioner happens to be father of the minor. He is the natural guardian of the said ward. In view of section 7 of Hindu Guardianship and Wards Act, 1890. This petitioner/father is appointed as guardian of his person and property, only in respect of this property mentioned in schedule.

After going through the materials on record and other aspects, it appears that the property has been turned into non-profitable. If the property is sold out by other co-sharers are negligible portion of the said plot will remain in his name. Other co-sharer are his mother, uncles and aunt. In their absence it will be difficult for his guardian to look after the property to which meagre portion of the plot. On the question defraying his educational expenses from that money, this Court finds no reason to believe the same, or allow this prayer banking on that portion of his prayer. But the fact remains in accordance with first part of the prayer, this Court finds justification to permit this petitioner as natural Court guardian to sell the property mentioned in the schedule on behalf of the minor.

From the E-slip and from the submission of the Ld. Lawyer for the petitioner it can be had that the minimum market price of the said property is Rs. 1,00,000/- and the prayer may be allowed only when that sale may fetch at least that minimum market price.

In accordance with above mentioned discussion and after

accommodating all aspects including the welfare of the minor, this application and the prayer amount in the application is allowed with the following conditions.

The petitioner Satyeswar Mondal S/o Kanailal Mondal of Jamna PS Pingla, West Midnapore being father of the minor of Harekrishna Mondal as well as appointed court is permitted to sell the property of the minor as mentioned in the schedule at the price not below than Rs. 1,00,000/-. He is direction that the transaction should be made through cheque and the cheque shall be deposited in any bank account of the minor and that bank account should be with any nationalized bank and if there is no bank account in the name of the minor then the petitioner is given liberty to open bank account with any nationalized bank in the name of minor and to deposit cheque and he is refrained from expending a single farthings from the account.

On attainment of his majority that amount deposited along with all papers of the bank should be handed over to the minor and applicant is to undertake to furnish minutes details of the deposited amount before this Court. On attainment of his majority this petitioner shall file an application praying for his relief from the guardian and at that time he shall submit the bank account of the minor along with supporting affidavit. All the orders shall be operative only when the petitioner/ father shall furnish bond of Rs. 1,00,000/- with the condition that in case of any breach and the condition as mentioned above, he shall be liable to pay that amount without further explanation.

This petition is disposed of.

To,
The Ld. District Judge,
Paschim Medinipur

(Through Proper Channel)

Sir,

In pursuant to the order No. 16 dt. 16.03.2017 of the Office of District Legal Services Authority, Paschim Medinipur, I beg to report you that I performed my duty on 19.03.2017 as Stenographer in National Lok Adalatak in the District Judge Court Premises and in view of the Judicial Department notification, I pray before your Honour to allow me to withdraw Compensatory allowance @ 5% of the basic pay.

Your faithfully,

(Raju Debnath)
Stenographer attached
to District Judge,
Paschim Medinipur

19 dtd, 05.04.2017

Ld. Lawyer for the appellant is present.

Petition dtd. 18.05.2016 filed by the appellant praying for substitution of legal heir in place of Respondent No. 2 who is died in the mean time.

Heard. Perused the petition.

Prayer for substitution of the legal heir left by deceased/ Respondent No. 2 is considered and allowed.

Let the name of the Respondent No. 2 be expunged from the memo of appeal since deceased and the name of the heirs of deceased/ Respondent No. 2 as mentioned in the petition dtd. 18.05.2016 be substituted.

It appears from the submission and the record that Respondent No. 1 was dead at the time of filing of this appeal.

In this circumstances, let her name be expunged from the memo of appeal.

Ld. Lawyer for the appellant submits that she will not substitute any person in her place.

To date..... for

Dictt and Corrt by me

D. J.

District Judge
Paschim Medinipur.

Title appeal 14/2017

04 dtd, 05.04.2017

Today is fixed for admission hearing.

It appears from the record that the prayed for appeal has been preferred against the judgement and decree of O.S being No. 24/2007. But in the memo of appeal it has been as T.S in stead of O.A.

Ld. Lawyer for the appellant submits that he has filed a petition praying for correction of that clerical mistake.

This petition dt. 08.02.2017 is taken up for hearing.

This clerical mistake is hereby found suitable to be corrected and in this circumstances, let the cost title and the memo of appeal be accorded accordingly in terms of prayer.

Hence, the prayer is allowed.

Another petition praying for stay of operation of the decree is also lying with the record. Other side is present. Petition u/s 148A is also filed on behalf of Respondent. Accordingly take necessary step upon Respondent before hearing of the stay petition.

Appellant should take step accordingly.

To..... for hearing of the stay petition, objection if any in the meantime.

Dictt and Corrt by me

D. J.

District Judge
Paschim Medinipur.

This is an application dt. 18.06.2015 u/s 10,11 of Guardian and Ward Act 1980 filed by one Sabana Taher with a prayer to appoint her as guardian of her minor son namely Md. Shad in respect of both his person and property. It reveals from the application that marriage tie of this applicant with her husband, Mafijuddin Mollah was solemnized in the month of August, 2010 as per Muslim Rites and Custom. This minor son namely Md. Shad, hereinafter to be referred as ward, was born on 16.11.2011. The applicant is an employee of railway. On 10.03.2014 in her absence her husband removed all her belongings and other personal papers and deposits from her house and thereafter, he has deserted her and since that time finding no other alternative she along with her ward has been staying at the refuge of her parents.

One criminal case is pending against her husband at her instance. Her husband does not maintain her minor son. He never took any responsibility of the minor son. The parents and other relatives of her husband never took any information of the minor and they have no care in respect of the welfare of the minor and in this circumstances, she has prayed for to be appointed as guardian of the person and property of the minor.

It appears from the record that the notice was issued upon the Respondents which were received un-served and thereafter, notice was issued upon them through register post with AD. Those notices could also not be served and returned back with remarks and post muster left out with address and thereafter, applicant filed a petition under order 5 rule 20 of the C.P.C praying for substitution of service and that was allowed and it was duly published in daily newspaper. Despite that publication neither OPs nor any person else have come forward with any case or any rival contention. In this circumstances, that application has been fixed for hearing in absence of Respondents.

In course of hearing, the petitioner herself has adduced evidence as PW1. In course of her examination her voter ID card, birth certificate of the minor, Aadhaar card of the applicant, her service I card, provisional pay slip have been exhibited as 1 ,2 , 3, 4 & 5 respectively. Publication in daily Bartaman newspaper dt. 18.03.2016 have been also **EXHIBITED AS 6**.

In view Indian Sariyat Act XXVI, 1937, the Muslim Personal Law (Sariyat) shall be applicable to the Indian Muslim in respect of guardianship. Necessary question crops up whether this Guardian and Ward Act should be applied to a person who is Muslim in faith.

The Guardian and Ward Act is secular in nature and as such there is nothing to prevent a Muslim from applying to the Court under the Guardian and Ward Act and he or she may be appointed or declared as a Guardian under the Act.

(2)

This application has been filed by natural guardian of the said minor. It also appears that this application is filed almost in a format prescribed in section 10 of the Act. The proper notice was issued to all interested persons and despite nobody has come forward.

This applicant, Sabana Taher is appointed as guardian of her minor son, Md. Shad in respect of his person and property. This applicant is given liberty to take all sorts of precaution and solely with the objective to retain the welfare of the child and applicant is hereby directed to execute bond to that effect that she will take all reasonable possible care for the benefit and all-round welfare of the child, failing which, she shall be liable to pay Rs. 2,00,000/- to the minor or to anybody as decided by the Court as and when the circumstances require.

The paramount considering to a Court in respect of such petition in the welfare of the ward. The guardian as per their personal law is evidently not taking care of that ward.

In this circumstances, this Court is of the firm opinion that unless the prayer of this applicant is allowed the interest of this ward will be produced to a considerable extent. That apart it appears to the Court that the prayer is bona fide, correct hence this Court accord this prayer.

Dictt and Corrt by me

D. J.

District Judge
Paschim Medinipur.

This J. Misc case has been filed on 03.01.2016 by one Jiten Adhikary claiming himself and his brother Rashbihari Adhikary as Sebait of one deity "Sri Sri Omkrishna Balaram", hereinafter be referred to as the deity. It is stated therein that their father namely Sri Suchandra Chandra Adhikary was only the Sebait of the said deity and the property as mentioned in the schedule of the petition is originally belonged to that deity and after demise of their father they have inherited Sebaitship of the deity and the said deity is their family as well as personal deity. Since that time of their father and after his demise they have been performing the daily Seba of the said deity.

The said property stands recorded in the settlement record in the name of the said deity and they have been shown as Sebaits of the said deity. The present mud built straw thatch room of the said deity is in a dilapidated condition and they are intending to construct new pucca temple of the said deity. To this Sebaits they have no way out to collect money for defraying cost of construction of the temple. This necessity of the deity as well as it is meant for the benefit of the deity too. It is further mentioned herein as per the petitioner that half portion of the suit plot has already been sold by his brother as well as one of the co-sharers to defray cost of daily Sebait of the said deity. In this compelling circumstances, this petitioner finds no other alternative to sell that remaining part of the property which stands in the name of the deity showing him as a Sebait for that purpose. In such circumstances, he has prayed for permission entailing him to sell the property as mentioned in the schedule of the plaint with the condition as may be conditions, as may be imposed by Ld Court.

After filing of the matter in accordance with the direction of this Court one public notice as to this application along with every details have been published in daily newspaper namely "Aakdin" dt. 03.05.2015. That portion of the publication has been marked **exBT 5**.

The petitioner has adduced evidence as PW1. The attested copy of the L.R.R.O.R of the said property, rent receipt, savings bank account stand in the name of the deity maintained with the Indian Bank, Midnapore Branch, blue print of the proposed temple, estimated cost of the said temple prepared by Civil Engineer have been marked as **exBT 1, 2, 3, 31 & 4** respectively. E-estimated slip of the said land has been filed after close of argument and which has also been marked **AS exBT 6**.

Now the question before this Court, whether prayed for permission should be accorded in favour of this petitioner/Sebait.

DECISION WITH REASONS

In this petition praying for permission to sell the property of the deity of one of the Sebait.

Following facts has been found proof or admitted during the hearing and from the materials on record placed before this Court. i) it appears from

the filed LRROR that only plot No. 209 stands recorded in settlement record in the name of deity. There is no paper to show that this deity has got other property or any source of income from where his daily Puja and other ritual worship may be carried on.

Another aspect is that another Sebait has already sold out half of the portion of the said plot to other person without caring for any permission from this Court. In this said plot there is a recorded Bargadar. That recorded Bargadar and other Sebait have not impleaded in this case as party. The total area of the said property is 58 decimal and this petitioner being Sebait of the said deity has claimed half of the plot that is 29 decimal. He has stated therein that the market price of the said amount is Rs. 428897/-whereas E assessment slip has disclosed that the market price of that 20 decimal land is Rs. 1093880/- and he has prayed for permission to sell to the extent of 25.64 decimal at Rs. 428897/-.

In comparison with that proposed sale the price and the price mentioned in the E assessment slip, it is palpably clear that the proposed sale price is much less than prevailing market price. In this peculiar facts and circumstances, this Court intends to highlight few factious before passing any order as to cite for permission or permission to sell the property.

Whatever, the earlier form a religion might have been, one think is almost certain, that Vedic religion had no time so idolorous it is believed that in due course men started treating god, animal, nature and other object as if they had superbeing quality anthropomorphism. In long run those believe crystallized into different forms of idol. There is some believe also that image or idol are meant only had aids to mediation for ignorance. In due course of time or from time immemorial we have been started placing all devotion and faith upon idol as if the idol himself is a god or holds power or god or good resides therein. The persons founding the deity becoming morality devotional responsible for the worship of the deity. For that reason and to perpetuate the practice of Seba puja and performing other ritual. The property was started being dedicated to the idol entrusted human agent supervise. In due course of time right from the founder and thereafter, his heirs start to consider that family idol or before idol as a member of his family or the locality as a case may be. Taking into considering the devotional part and emotional part of the follower and founder. We take daily worship of idol or Seba puja is as good as food and respect to the living creature. There should endeavour from all

2

respect so that Seba puja of the idol should not be stopped which is considered as sin. A temple is a house of the deity.

Now, this Court is to consider whether responsibility of deity is essential or first preference than to daily Seba. This Court thinks that there should be at least responsible assurance that Seba of the idol should be performed in usual practice and after getting assurance, the Court should think or decide whether temple is necessary for the benefit of the deity or not.

In this case, the party felt the assurance that there is other means or source of income for defraying expenses of the daily Seba puja and performance of ritual. In our early text more specific, in Monus Sangit there is a injunction that if any sin is committed any person or arbitrator or any sin is committed due to latches of the arbitrator, the total curse is done from that sin should be divided in four equal share and half of the share and the curse

should be imputed upon a person who commits wrong and remaining $\frac{1}{4}$ should be borne by the arbitrator and the kind.

In this factual premises and the in the context of entirety and materials on record, this Court fails to consider that the prayed for permission at all for benefit of the deity.

Hence, the prayed for permission is found not for the welfare of the deity in two sense.

Hence, it is that the Misc case be and the same is hereby considered and rejected.

Admittedly there is two Seba of the said deity. One of them has already sold out his share. Now this Court fails to understand which aspect has prompted this petitioner to construct a temple alone living other co-sharers to pay 50% of cost of the temple.

This aspect also brings suspension into seed of prayer on the point how far that prayer is bona fide.

This petition dt. 28.03.2017 filed by Ld. Defence counsel on behalf of the accused Sk. Rasid is taken up for hearing in presence of both parties.

This petition relates to section 299 Cr.P.C.

To appreciate the prayer filed on behalf of the accused may be done effectively if the entire case narrated in sum and substance. The present accused along with few others were Charge Sheeted with other five accused persons.

The case against this accused filed for the present on 28.04.2015.

In his absence remaining accused persons were tried and those accused persons were acquitted u/s 232 Cr.P.C. Later on this accused was arrested and produced before this Court on 07.03.2017 and on the said date the accused is brought on record again.

In this factual circumstances, on 28.03.2014 praying for permission to adopt the evidence already recorded in his absence during trial of remaining accused persons .

Ld. P.P opposes the prayer. He submitted that it is privilege of the prosecution for such adoption of evidence recorded earlier subject to satisfaction of some other conditions.

It is admitted that this prayer exclusively relates to section 299(1) Cr.P.C .

Ld. Lawyer for the accused submits that this accused has equal statutory right to adopt that recorded evidence in the trial. With a view to substantiate that contention he refers to and relies upon kind observation by Hon'ble High Court, Calcutta reported in 2004 CCr LR Cal 87 Sisir Ghosh Vs State of West Bengal.

After going through the entire kind observation, it appears that the entire fact of the case is altogether different and to disclose distinguish two ratio as so kindly help by his Lordship, this Court intends to jot down the fact of that case.

In that case two accused persons were Charge Sheeted. The case against the petitioner was filed for the present. Sessions Trial was proceeded against the remaining accused and 12 witnesses were examined in his absence. Later on that remaining accused also fled from the justice. At this stage this petitioner was arrested and his trial was started after framing charge against him. During the trial all the petitioners and five witnesses were examined on recall and cross examined and thereafter, as per prayer of the Ld. P.P charge of the case was altered and in view of alteration of charge Ld. Trial Court proposed for denovo trial. At that time that petitioner filed a case u/s 299 Cr.P.C and Ld. Trial Court turned down the aspects on the ground that there should be some specific observations of recording evidence exparte against the accused and whenever his trial is started and later on that evidence may be used against him if other conditions are fulfilled and Ld. Trial Court also submits that denovo trial is needed which arises from the alteration of charge.

His Lordship was kind enough to approve first portion of the order in which the Ld. Trial Court held that the section 299 Cr.P.C had no application. But his Lordship was kind enough to set aside only that portion of the order in which denovo trial was ordered and that order was set aside that specific reason whereas without denovo trial this petitioner was placed for trial and in

course of his trial other witnesses were examined on recall. Then there is no necessity for any denovo trial for the alteration of the charge because this witnesses again may be recalled for examination.

It is unfortunate to say that this kind observation has been referred by senior Lawyer of this Bar which has got no bearing with the present question as well as this kind observation in no way holds this case.

In criminal trial there is no scope for exparte trial save and excepting section 299 Cr.P.C.

In view of section 299 (1) Cr.P.C the evidence of few persons may be taken even before the trial and which can be used against the accused later on at the time if some condition are fulfilled. During trial or inquiry such evidence may be recorded exparte if the accused is declared absconder and that is bagged by local evidence and on that occasion that can be used against the accused only when that witness died in the mean time or witness is now incapable to giving evidence or witness cannot be found out or witness cannot be produced without any amount of delay or inconvenience.

In this case not a single condition is found existing. Hence, the prayer put forward on behalf of the accused is consider and rejected and this Court any how restrained to impose any exorbitant cost in this misconception petition only for the sake of accused who are generally hells from poor economic condition and actually he has got no knowledge what is pleaded on his behalf.

Fix evidence.

....., DT. 24.04.2017

In accordance with direction of Ld. Additional Sessions Judge, 7th Court, Paschim Medinipur, this case record is placed before this Sessions Court on the ground that as per submission of Ld. Additional P.P attached to his Court all the offences mentioned in the Charge Sheet should be heard by Ld. Special Court substituted under POCSO Act.

All the accused persons on C.B are present.

Heard both sides.

Perused the materials on record.

It appears to this Court that all the offences mentioned in the Charge Sheet and the materials on record as it is found that none of the penal section comes within the preview of any offence as mentioned under POCSO Act.

In this circumstances, this Court is of the opinion that Ld. Additional Sessions Judge, 7th Court, Paschim Medinipur has got jurisdiction to proceed with the case.

Accordingly, the case record be sent back to the Ld. Additional Session Judge, 7th Court, Paschim Medinipur with a direction to the surety to produce the accused before that Court.

To

Dictt and Corrt by me

S. J.

Sessions Judge
Paschim Medinipur.

ORDER NO. 07, 24.04.2017

Sole accused person namely Sonu Das on C.B is present with Ld. Defence counsel.

Ld. P.P is also present on behalf of the State.

It appears from the order No. 5 dt. 20.03.2017 that Ld. Additional Sessions Judge, 7th Court, Paschim Medinipur is of the opinion that all the offences mentioned in the Charge Sheet like as section 363/366A/34 I.P.C are triable by Ld. Special Court constituted or designated as per section 28 of the POCSO Act, 2012.

On account of that factual as well as legal premises Ld. Court has sent back the record to this Court with a direction to the accused to appear before this Court.

Heard the Ld. Lawyer for the accused and Ld. P.P.

Both of them pray for necessary order in that factual and legal circumstances.

As per frame work of the Act, 2012 the Special Court constituted u/s 28 is competent to try offences under the Act, 2012.

All the offences as mentioned in and defined in section 3,5,7,9,11 & 13 are altogether different from the offences as defined and mentioned in 361/366A/363/34 I.P.C. Offences as defined in section 363A I.P.C is aggregated from kidnapping and which is meant to punish a person for the intention. It has got no relation with the abatement and attempt to commit any offence as mentioned in section 17 & 18 of the Act, 2012.

The the line of that reason the penal sections from or the offences as mentioned in section 17 & 18 have got no relation with the penal section 366A I.P.C.

In this circumstances, this Court comes to a conclusion that Ld. Sessions Judge, 7th Court, Paschim Medinipur is competent to try all the offences as mentioned in the Charge Sheet and for that reason the case record is returned to the Ld Court for necessary action.

Surety is directed to produce the accused person on bail before the Ld. Trial Court on.....

Dictt and Corrt by me

S. J.

Sessions Judge
Paschim Medinipur.

Misc appeal 22/2017

On the allegation of admission of this Misc Appeal Ld. Lawyer for the Appellant refers kind observation of Supreme Court reported in AIR SC page 3032. It appears from the kind observation at para 18 & 19 that there is a mandate that final order of such application on injunction should be passed within 30 days. In case whether the mandate of order 39 rule 3A of the code is flouted. The aggrieved party shall be entitled to right of appeal notwithstanding the pendency of the application for grant or vacation of the temporary injunction against the order of remaining in force.

Having regard to the kind observation the appeal is admitted.

The petition praying for stay of operation of the order impugned dt. 18.04.2017 passed by Civil Judge, (Jr. Divn), 1st Court, Paschim Medinipur in connection with is taken up for hearing.

.^mISC 06/2017

°RDER °O.2, DTD. 15.05.2017

The record is put up by a petition.

One Smt. Soma @ Pratima Sasmal has filed this petition under order 1 rule 10/2 of the C.P.C praying for a direction for his addition as a party in this case on the ground stated therein.

This J. Misc case arises from an application u/s 8 of the Hindu Minority and Guardianship Act read with section 29 of the Guardian and Ward Act.

One Asit Ranjan Sasmal the biological father of the minor Sriman Abhay Sasmal has filed this petition praying for permission to sale the property of the said minor. This petition as stated in the petition that she is the biological mother of the child and the child is residing with her but curiously enough that the petitioner has not been made party in this application.

Perused the prayer and the petition.

This petitioner-wife has prayed to be added in this case as party of her own capacity not to represent the minor. In usual course such type of application is not contested by any section and for that reason the Court is to bank upon the testimony and papers submitted by the petitioner.

Having regard to the materials stated in the petition, this Court comes to a conclusion that the presence of the petitioner-mother would be beneficiary for the determination of the real matter in dispute. In this circumstances, her presence is found necessary for just decision of the prayer.

In this circumstances, this Court considers and allows her prayer and she is permitted to contest the application as OP No. 1.

Let her name be so substituted after amendment of cause title of the application.

It is pertinent to mention here that the copy of the petition was supplied to the petitioner-father but on call he is found absent.

To date for further order.

Dictt and Corrt by me

S. J.

Sessions Judge
Paschim Medinipur.

1 TITLE 3PPEAL 03/2016

07 DT. 16.05.2017

Today is fixed for hearing of the petition dt. 21.01.2016 filed by appellants stating therein that after the disposal of the Title Appeal Plaintiff No. 3 Ka namely Sutapa Patra died. She has left behind her one daughter and one son who are already on record and for that reason there is no necessity to bring her heirs on record afresh.

In this circumstances, the Appellants have prayed for permission not to put on their names afresh.

Heard both sides.

The prayer is considered and allowed.

Another petition filed on behalf of the Appellants stating there in that Respondent No. 1 did not appeal before the Id trial Court and also did not contest the suit by filing written complaint.

In this circumstances, the Appellants have prayed for a direction so that the name of the Respondent No. 1 may be expunged from the Memo of appeal. That prayer is backed by an affidavit.

Heard. The prayer is allowed at the risk of the Appellants.

Let the name of Respondent No. 1 who did not contest the suit before the Id trail Court be expunged from the Cause Title of the Appeal.

To for further hearing.

Dictt and Corrt by me

S. J.

District Judge
Paschim Medinipur.

J. Misc 22/2016

This is an application u/s 52 of Mental Health Act.

One Somnath Chatterjee has filed this petition on behalf of his brother, Santosh Chatterjee stating therein that their father Lt. Shyamaprasad Chatterjee was an employee of S.E.R Kharagpur and he retired from service and he was drawing his pension till his death on 29.09.2005. After his demise his widow Smt. Jamuna Chatterjee, who happens to be mother of Somnath Chatterjee and Santosh Chatterjee, used to draw family pension till her death on 08.02.2014.

Sri Santosh Chatterjee is a mentally challenged person. During the life time of his parents that Santosh Chatterjee used to reside with their parents and after the death of his parents the present petitioner Somnath Chatterjee being his elder brother has taken the care and custody of Santosh Chatterjee and he looks after the welfare of the mentally challenged brother. As per the certificate issued by the authority, this person is mentally disabled at 75% and it was issued on 06.07.2010. He being mentally challenged person is legally entitled to get family pension from the Railway Authority as his father was Railway employee (pension holder) and he is disabled dependent of his father, thereafter, his mother as per rule. He has been assessed and found mentally challenged person to the extent of 75 %. His further judicial inquisition as contemplated u/s 50 of Mental Health Act is not required. With a view to manage the property of that person and to arrange and to draw the family pension from the Railway Authority appointment of guardian of this mentally challenged person is necessary. This petitioner has got no adverse necessity with the mentally challenged person. Smt. Jayanti Banerjee W/o of Sri Ajit Kumar Banerjee is the sister of this petitioner and mentally challenged person. He has been made party in this case to avoid further legal complication.

In this circumstances, this petitioner Somnath Chatterjee has prayed for an order appointing him as guardian in respect of person and property of Santosh Chatterjee, mentally challenged person.

The elder sister of the parties namely Jayanti Banerjee @ Jaya Rani Banerjee has appeared before this Court with Vokatnama and an affidavit stating therein that she has got no objection if the petitioner Somnath Chatterjee is appointed as guardian on behalf of Santosh Chatterjee for drawing the family pension.

In course of hearing, petitioner Somnath Chatterjee has adduced evidence as PW1. Disability certificate in respect of Santosh Chatterjee, School Certificate, Death Certificates of their parents, Recommendation letter issued by Divisional Personal Officer, S.E.R, another letter dt. 22.07.2014 issued by the Divisional Personal Officer S.E.R, Kharagpur and attested copies of Voter Identity Card of PW1 have been exhibited as Exbts 1, 2, 3, 4, 5, 6 & 7 respectively.

After careful scrutinizing and scanning of the filed documents and the testimonies of PW1, it appears that Somnath Chatterjee S/o Lt.

Shyamaprosad Chatterjee appeared or produced before a medical board consisting of Medical Superintendent cum Vice Principal and Chairman, Handicapped Board, Medinipur Medical College and Hospital, Paschim Medinipur and other members on 06.07.2010 and he was diagnosed and certified a mentally challenged person with a mental retardation which is permanent in nature and percentage of that disability has been calculated to the extent of 75 % with the further findings that there is a chance of variation of percentage and it requires review after ten years. The intelligent quotient level of this person is below 34 which categorized him as moderate intelligent quotient. It appears from the Exbt 2 that Head Master, Kharagpur Bharati Vidyapith High School issued a certificate in respect of Santosh Chatterjee on 28.06.1980 stating there in that in the year 1980 he was a student of class V and as per Admission Registrar his date of birth is 15th September, 1970. It appears from the exbt 3 and Exbt 4 that his father and mother died on 29.09.2005 and 08.02.2014 respectively. Exbt 5 discloses that D.P.R, S.E.R, Kharagpur had recommended the name of that person for the purpose of family pension as physical handicapped and mental retarded son of Lt. Shyamaprosad Chatterjee, ex-employee. Exbt 6 is the letter in which this petitioner has been directed to furnish a non-natural Guardianship Certificate from competent Court of Law to proceed with the case. Exbt 7 is attested copy of Voter Identity Card of PW1.

J. Misc case No. 22/2016

9 dtd This is a petition u/s 52 of Mental Health Act.

The petitioner Somnath Chatterjee being elder brother of one Santosh Chatterjee has filed this petition praying for his appointment as guardian of his said brother who is a mentally ill person. Section 52 of the Mental Health Act empowers the District Court to appoint a guardian of a mentally ill person who is incapable of taking care of himself.

It appears from section 2(l) of Mental Health Act, 1987 that mentally ill person means a person who is in need of treatment by reason of any mental disorder other than mental retardation.

As per section 29(1)(S) of the Mental Health Care Act 2017 mental illness means substantial disorder of thinking etc but does not include mental retardation. It appears from the filed disability certificate of Santosh Chatterjee (exbt.1) that the Certificate No. 636 dtd. 6.7.2010 was issued by a medical board consisting of many members including Medical Superintendent Cum Vice Principal and Chairman, Handicapped Board, MMCH, Paschim Medinipur. As per this certificate, this person is a mentally challenged person with mental retardation.

Now two questions does arise whether this person does come under the definition of mentally ill person and second question is whether the Certificate No. 636 dated 6.7.10 is genuine. These two questions may be and conveniently answered by the board who issued the same.

In this circumstances, this Court further thinks that examination of the said person by the board is also necessary.

Accordingly, let a copy of this order along with the photo copy of the Certificate No. 636 dated 6.7.2010 be sent to the Medical Superintendent cum Vice Principal, Handicapped Board, MMCH, Paschim Medinipur to furnish the questions of above noted queries after examination of the records and the patience, if necessary.

The petitioner is directed to contact with the said Medical Superintendent cum Vice Principal, Handicapped Board, MMCH, Paschim Medinipur to that effect for further instruction, if any, from his end.

To for report.

Dictt and Corrt by me

S. J.

District Judge
Paschim Medinipur.

ORDER NO. 9, DTD. 22.05.2017

Today is fixed for hearing of the show cause notice petition filed on behalf of the OP.

This is a petition u/s 25 of the Guardian and Wards Act in which the father of the minor has prayed for permission to meet his ward, which is under the custody of the petitioner-mother. It appears that several dates were given to the OP for filing W/O despite that she failed to file the same and at last on 20.08.2016 the prayer for time filed on her behalf was rejected and the case was fixed for exparte.

It appears from the show cause notice that she could not collect all the necessary papers in the mean time and for that reason she could not file W/O in the due time.

Ld. Lawyer for the Other Side submits that the OP-wife is dragging the case causing deprivation to the petitioner for meeting his minor ward.

Heard both sides.

The cause shown in the petition is found sufficient and it is accepted.

The exparte order dt. 20.08.2016 is hereby vacated. The OP is given liberty to contest the petition. It appears from the record that it was filed on 2015 and since that time the case is being dragged. This Court thinks that speedy disposal of this case is warranted.

Hence, the case is fixed for hearing of the petition.

Parties are directed to get ready on the next date fixed.

No adjournment will be allowed excepting in exigency.

Dictt and Corrt by me

S. J.

District Judge
Paschim Medinipur.

ORDER nO. 7, DTD. 22.05.2017

Today is fixed for hearing of the petition u/s 5 of the Limitation Act.

Ld. Lawyer for the petitioner is present.

Respondents are absent without any step on repeated calls.

It appears from the record that the case was dismissed on 31.03.2016.

The appeal was filed after expiry of appeal period and that delay is of 52 days and as per petition the delay was caused due to illness of the Complainant-Appellant who is 80 years old and as per record he was admitted S.S.K.M Hospital on 04.05.2015 and discharged on 17.05.2015. The delay is of 52 days.

Considering the kind observation of Hon'ble Supreme Court regarding liberal view in favour of allowing such limitation petition, this Court considers and allows this petition with the costs of Rs. 300/- in favour of the Respondents.

Thus, the limitation in respect of 52 days delay is condoned and the appeal is admitted.

Dictt and Corrt by me

S. J.

District Judge
Paschim Medinipur.

Misc Appeal 32/2017

03 dtd 30.05.2017

The Appellants file hazira. Today is fixed for

admission of the appeal.

Heard the Ld. advocate for the Appellants. He has moved the petition for admission of the appeal.

Perused the case record and certified copy of the impugned order dtd. 08.05.2017 passed by the Civil Judge (Jr. Div.), 2nd Court, Paschim Medinipur in T.S. Case No. 333/2017 along with certified copy of the impugned order. It appears that the appeal is filed within time and so the appeal is admitted.

Issue notice upon the Respondents. Requisite at once.

Call for LCR.

The application u/s 39 rule 1 & 2 of CPC filed by the Appellant is taken up for hearing. The Appellant has prayed for an order on temporary injunction against the Respondents-Defendants so that they may not disturb the peaceful possession of the Appellant over the suit property and may not change the nature and character of the suit property till the disposal of the Misc case and pending herein of the injunction petition.

In course of hearing, Ld. Lawyer for Appellant submits ad-interim injunction against the Respondents-Defendants is urgently needed and there is no time to spare for serving notice upon Respondent-Defendant.

In course of hearing, he submits that the Respondents-Defendants are processing road over the land of this Appellant and in earlier occasion in the writ petition Hon'ble High Court has been pleased to hold that land of the petitioner is released from the land acquisition proceeding. He submits that if that land has not been yet taken over, the government has no right to possess the road over the said land. If the Respondents-Defendants are not restrained at once the other side will suffer irreparable loss.

This Court concedes to the submission of Ld. Lawyer that in case of exigency the Court may grant ad-interim injunction without giving any notice of the application to the O.P. But the fact of this case

(2)

remains on another footing. It appears from the petition that the State of West Bengal and government officials are Respondent and the suit before the Ld Trial Court has been filed along with a petition u/s 80(2)

of C.P.C praying for exemption from serving notice upon the Defendant before initiation of the suit and the Ld. Trial Court granted leave. It appears that section 80(2) of the CPC is that in any occasion interim order or relief may not be given or granted in any suit without giving to the government and public officer, as the case may be, a reasonable opportunity showing cause in respect of the relief prayed for in the suit.

It is pertinent to mention here that the Ld. Trial Court rejected the prayed for interim relief on the ground that there is prohibition in section 80(2) of the C.P.C. This Misc Appeal has been preferred against the rejection order.

In this factual premises and in the backdrop of the suit, this Court is not in a position to allow the prayed for interim relief in the form injunction against the specific statutory prohibition.

Hence, the prayer for interim relief is considered and **rejected**.

To for LCR.

Dictt and Corrt by me

D.J.

District Judge
Paschim Medinipur

Cr. Revn. 727/2016

This is an application for Revision u/s 397/398/399 Cr.P.C. The Revisionist has preferred this Revision against the order dt. 02.09.2016 passed by Ld. CJM, Paschim Medinipur in connection with Keshpur P.S case No. 04/2014, u/s 506/509 I.P.C and that case has been numbered as GR Case No. 47/2014.

Today is fixed for admission of Revision. It appears from the record that the LCR of the case in question has already been sent to this Court. But it is curious enough that till there is no specific order calling for LCR. It appears from the LCR that on the first page of LCR copy of order as to filing in this Criminal Revision was sent to the Ld. Trial Court. Perhaps the case record has been sent on the basis of that information.

It may had from the kind observation of Hon'ble Supreme Court reported in AIR 1989 page 232 and kind observation of Hon'ble High Court, Bombay reported in AIR 1978, page 888 that the Revisional Court in exercising its supervisory power over the Inferior Criminal Court corrects irregularity of the order passed by Inferior Court and objective is to prevent perpetuation of illegality of miscarriage of justice. Even if on bare reading of the filed papers it is found satisfactory that there is no need for interference, it may reject the application summarily by speaking a reasoned order and the Court may not go for long hearing or awaiting LCR. In this case the case record has been sent and placed before this Court for perusal.

It appears from the order under challenge that the Ld. Trial Court specifically stated and assigned reason that on earlier occasion the charge sheet was not accepted and vide order dt. 17.12.2015 the then P.O in chair ordered for reinvestigation.

There is a gulf difference in between further investigation and reinvestigation. Further investigation is continuation of earlier investigation as well as the investigation is continued even after filing of charge sheet. But the reinvestigation includes an afresh investigation having no relation or bearing with the earlier investigation of charge sheet. All the materials collected during earlier investigation is treated as nonest for the fresh investigation under challenge of reinvestigation. Accordingly, the Ld. Trial Court has not done any err in law in passing the said order.

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In the order dt. 02.09.2016, Ld. Trial Court after hearing both the parties accepted the Charge Sheet submitted by I.O after reinvestigation.

On being aggrieved at and dissatisfied with the said order dt. 02.09.2016, hereinafter be referred to as the order, has filed this Revision on the ground that the order in question is bad in law, Ld. CJM, Paschim Medinipur should have served notice upon the defacto complainant before taking cognizance. The Charge Sheet submitted after reinvestigation, Ld. CJM, Paschim Medinipur did not go through the materials on record before taking cognizance. The Revisionist has also stated that in the alleged Charge Sheet filed after reinvestigation, the I.O should have cited penal section as prescribed in SC & ST (Prevention and Atrocities Act) along with section 354 I.P.C.

Now the question is whether the order impugned is legal, correct and proper. Another question is that whether the order does suffer from any irregularity or impropriety.

In course of hearing of the petition and going through the entire materials on record, it appears that after investigation the I.O submitted Charge Sheet and after considering 'naraji' petition filed on behalf of defacto complainant, Ld. Trial Court on 17.12.2015 did not accept the charge sheet and sent the case for reinvestigation with the direction upon the O/C Keshpur P.S to get the case re-investigated by a competent I.O and not below the rank of S.I.

In accordance with the direction another I.O was entrusted with the investigation of the case and after reinvestigation on 02.09.2016 the I.O files Charge Sheet afresh.

It appears from the order impugned that on 09.02.2016, the defacto complainant was present by filing Haziran and the Ld. Trial Court mentioned that the result of investigation was informed to the defacto complainant and till that day he had not approached before that Court against the Charge Sheet and the Ld. Trial Court was of the opinion, inferred therefrom, that prima facie the defacto complainant had no objection against the Charge Sheet.

J. Misc 102/2015

Order No.13, dt. 05.06.2017

This is an application u/s 24 of the C.P.C filed on 18.11.2015 by the Plaintiff Santanu Bose and others of Title Suit No. 106/2015 as well as The Defendant of Title Suit No. 49/2012.

One of the case is pending in the Court of Ld. Civil Judge (Jr. Divn.) Jhargram and another is pending in the Court of Ld. Civil Judge (Sr. Divn.), Jhargram. They have prayed for withdrawal and transfer of both the cases from that Court to any other Court outside Jhargram Station.

The sum and substance of the reason, as stated by them, are as follows :-

In connivance with other muscle men these OPs are trying to dispossess from the land in question and to grab the land banking on a alleged deed of sale.

They have also stated that few of this OPs are promoters of real estate and they along with other local promoters are creating pressure upon the lawyers of the local bar, resultantly the lawyers are not willing to stand in favour of the petitioner to proceed with or to defend the suits as the case may be.

It appears from the filed papers that on 17.07.2015 O.P No. 4 lodged GD entry with Jhargram P.S that the OP No. 1 and others tried to take possession of the land forcibly. It is pertinent to mention here that Op No. 1 is the Plaintiff of the suit No. 49/2012.

Petitioner have stated that in this factual premises they apprehend that this O.P group will not allow them to contest the case at Jhargram and thereby they will be deprived from seeking justice there. In this circumstances, they have prayed for withdrawal and transfer of the suit to any other Court which is beyond territory of this Jhargram Sadar. Ld. Lawyer for the other side opposes the petition.

Heard both sides in full.

Having regard to the enterity of the fact as stated by both the parties and considering the nature of apprehension and factual incident, which the petitioner have canvassed before this Court, this Court comes to a conclusion that a reasonable apprehension is there.

This petitioner may not find the get of justice of that local Court for craving fair trial. On the other hand, it is not found that if the suits are withdrawn and transferred to any other Court beyond jurisdiction of Jhargram Court, will cause any miscarriage of justice to either of the parties or it will cause irreparable loss to either of the parties.

In this circumstances, this Court finds justification to withdraw and transfer all those two pending suits to any other Court of Ld. Civil Judge (Jr. Divn.), Paschim Medinipur. Hence, the prayer is considered and allowed.

Contd.....

Both the Title Suits being No. 49/2012 and 106/2015 pending before the Ld. Civil Judge (Sr. Divn.) Jhargram and Ld. Civil Judge, (Jr. Divn.) Jhargram are withdrawn from the respective Courts and transferred to the Court of Ld. Civil Judge (Sr. Divn), 2nd Court, Paschim Medinipur and Ld. Civil Judge (Jr. Divn.) 1st Court, Paschim Medinipur respectively.

Let a copy of this order be sent to Ld. Civil Judge (Sr. Divn.), Jhargram and Civil Judge, (Jr.Divn.), Jhargram for necessary compliance.

Let another copy of this order be sent to Ld. Civil Judge (Sr.Divn) 2nd Court, Paschim Medinipur and Ld. Civil Judge, (Jr. Divn) 1st Court, Paschim Medinipur informing them about the transfer with a direction to dispose of those suits within the shortest possible time, after necessary entries in the Trial Registers.

Thus, this J. Misc Case is disposed of on contest.

Dict & Corrt by me,

D.J.

District Judge,
Paschim Medinipur.

M.A.C.Case No. 381/2015

Order No.....dt 03.05.2017

The record is put by a petition for hearing of pending petition dt. 15.09.2016.

None is present on behalf of the OPs

It appears from the petition dt. 15.09.2016 and from the submission of Ld. Lawyer that this petitioner namely Nimai Jana sustained severe road traffic injury. He was so injured that he could not file petition u/s 166 of M.V Act by his own hand and his wife filed this claim case on behalf of his injured husband. In this claim case she also represented the minor child of the injured and the petitioner. In the mean time, that injured recouped his health and he wants to proceed with the case as petitioner in place of his wife and minor son.

It also appears from the filed papers that the petitioner-wife filed a petition dt. 15.09.2016 supported by an affidavit stating therein that they have no objection if the name of her husband substituted as petitioner of MAC Case in stead of her wife and her minor son.

Having regard to materials on record and the provision of this M.V Act and the nature of the case, this case thinks that the prayer made therein is both legal, justified and they should be accorded. Hence, this prayer is considered and allowed.

Petitioner Nimai Jana be substituted as sole petitioner of this MAC Case in place of his wife, Rekha Jana and minor child by means of amendment of the application. The petitioner Nimai Jana is hereby directed to file fresh petition after incorporation of Amendment prayer and on that event this petition will be treated as, if it is filed on 31.07.2015 that is the original date of filing, MAC Case by his wife.

Dict & Corrt by me,

D.J.

District Judge,
Paschim Medinipur.

J. Misc 81 of 2016

Order No.....dt.....

This is an application u/s 8 (2) of the Hindu Minority and Guardianship Act and section 29 of the Guardianship and Wards Act filed by one Smt. Tapasi Mondal being natural guardian cum mother of the minor, Akash Mondal. This petition was filed on 05.09.2016.

It has been stated that Rabindranath Mondal was the husband of the Tapasi Mondal as well as the father of the minor, Akash Mondal. He died on 26.10.2013 leaving behind his minor son and the petitioner as his wife and widow respectively.

The property mentioned in the schedule in this petition belongs to the minor, Akash Mondal and that land is 12 decimal in measurement and agricultural land in nature but that land is not fertile and fails to yield anything. That apart, that land is situated at the distance of 3-4 Kms from the house of the Applicant. The Applicant has intended to sell the land and also intended to deposit that sale proceeding with any Post Office in MIS Scheme and thereby the interest of the minor will be served. This intended transaction is beneficial to the minor and aimed at to the welfare of the minor.

After filing of this case all the near relatives, as mentioned at para 9 of the application, were served with notice by this Court. Thereafter, all those near relatives appeared before this Court and filed no objection against solicited permission to sell the property of the minor. The pendency of the suit along with prayer and description of the property published in daily newspaper "Akdin" dt. 15.01.2017. Despite that publication nobody has come forward raising no objection or claiming any adverse interest against the property or permission as prayed for.

The petitioner, Tapasi Mondal has deposed as PW1 in all.

Certificate of death of her husband as well as the father of the minor has been marked Exbt 1.

It appears therefrom that the said Rabindranath Mondal S/o Lt. Balai Mondal died on 26.10.2013. Exbt 2 is the deed of gift executed by Balai Mondal, who happens to be grand-father of the minor, in favour the minor in respect of the property as mentioned in the schedule of the application.

It is pertinent to mention here that within four corners of the

that minor son took birth or they have not taken any endeavour to prove his minority at present. However, later on, on recall PW1 has proved that the date of birth of the minor is 19.05.2007 (birth certificate Exbt.....)

Having regard to the materials on record, it appears that the land mentioned in the schedule belongs to the minor Akash Mondal and the petitioner Tapasi Mondal is his natural mother. Akash Mondal is still minor taking his date of birth as on 19.05.2007. It is also evident that his father died on 26.10.2013. The near relatives or neighbours or any third person has not put forward any objection despite public notice.

This petitioner, Tapasi Mondal is the natural mother and there is a simpliciter presumption that the natural mother always looks after the benefit and welfare of her child even at the cost of her life barring in some and in few exceptional cases. That divine motherhood and presumption arises therefrom is found unmalign and unrebartted.

Having regard to materials on record and all those aspects, this Court comes to a conclusion that nature of the land is not fertile at present and it being situated at a considerable distance, this woman-petitioner finds difficulty to look after the same and if the land in question is sold out, as intended, and if the sale proceeding is deposited with any Nationalized Bank or any Post Office in profitable Savings Scheme that will serve benefit of the minor and protect the interest of the minor. But it is true that what should be proper market value of the same, has not been stated in the materials. However, the petitioner-mother is given liberty with a strict direction to sell the property of the minor as mentioned in the schedule and he is prevailing market price. As a result, the prayer made in the petition is considered and allowed.

Hence, the Misc Case be and the same is allowed.

The petitioner-mother, Tapasi Mondal is appointed as guardian of the property of the ward and permitted to sell property as mentioned in the schedule at highest market price. She is directed to open savings bank account or like any account with any Nationalized Bank or Post Office and to deposit that sale proceeding with the account and the entire proceeding of the sale will be through bank transaction and that transaction of sale in cash is

(3)

strictly prohibited. She is further directed not to withdraw any part of the sale proceeding from the account so long as he attains his majority. She is given liberty to withdraw the interest accrues on the deposited sale to maintain her minor son.

The petitioner-mother is hereby directed to submit photo copy of the account, the sale deed and the papers showing that property was sold at highest market price, failing which necessary legal action will be taken against her.

Thus, the petition is disposed of.

Dict & Corrt by me,

D.J.

District Judge,
Paschim Medinipur.

O.S-01/2016

Order No. 02, dated 05.06.2017

The petition dt. 07.11.2016 filed by OP is taken up for hearing in presence of Ld. Lawyer for the petitioner.

In this case, the prayer for probate in respect of will dt. 07.01.2012 left by Monmohan Saha.

Ld. Lawyer for the OP, prays for permission to inspect the will.

Other Side has not no objection.

At present that will reported lying with the custody of Head Clerk. It is evidence that there are endorsement beside the order No. 8 dt. 16.01.2017. The prayer is considered and allowed.

OP is given liberty to inspect the will

Dict & Corrt by me,

D.J.

District Judge,
Paschim Medinipur.

Money Execution 11 of 2015

Order No.....dt.....

The record is taken up for passing order. In this Money Execution Case Dhr has prayed for attachment of the property mentioned inventory of M. Execution petition. All movable property mentioned therein are household articles including one motor cycle or scooter whatever may be.

It also appears that the award passed by sole arbitrator on 09.09.2014 that this Dhr is entitled to get the same from the Jdr as mentioned in the award. But there is no paper before this Court to satisfy that those movable property mentioned in the petition, belong to the Jdr and the description of this movable properties are vague and indefinite. If the execution order or attachment order is passed on the basis of list, there must be miscarriage of justice or there would be no fruitful result in case of attachment of the property for the reason that description of the ownership of the property has not been mentioned in details.

In this circumstances, Dhr is hereby directed to furnish every minute details of the property along with paper showing that Jdr are actually owners and those are under their possession

Dict & Corrt by me,

D.J.

District Judge,
Paschim Medinipur.

Act VIII- 16 of 2016

Order No. 06, dt. 02.05.2016

It appears that Exbt 4 & Exbt 6 has not been made part of the record with due process. That apart, a further examination of PW1 is found necessary for necessary order.

In this circumstances, petitioner is directed to take step so that Exbt 4 & Exbt 6 may be proved in accordance with proceed laid down in Evidence Act.

Fixing 14.06.2017 for further evidence and order.

Dict & Corrt by me,

D.J.

District Judge,
Paschim Medinipur.

Act VIII- 16 of 2016

Order No. 06, dt. 02.05.2016

One K. Udan Bhaskar Rao has filed this application u/s 10 of the Guardian and Wards Act, 1890 for appointment of guardian in respect of minor K. Venkata Sai Kirtee @ Kirtee daughter of Lt. Surya Rao. This Applicant, K. Udaya is the son of K. Surya. It also appears that the minor K. Venkata Sai Kirtee @ Kirtee is also the daughter of K. Surya.

From the filed deed of adoption dt. 30.07.2010 that K. Saraswati widow of K. Surya took adoption of minor K. Venkata Sai Kirtee @ Kirtee from her biological parents.

It is also evidence from the deed itself that at the time of that adoption, Lt. K. Surya Rao i.e. the husband of adoptive mother as well as the father of the petitioner K. Udaya died before the date of adoption.

The case of the petitioner is that K. Surya Rao died on 16.09.1990 and his wife K. Saraswati died on 16.04.2013 and that adoptive daughter of K. Saraswati is his adoptive sister and she is residing with him and he looks after her welfare.

After death of K. Surya Rao, his wife K. Saraswati got her Railway Compensatory amount as her husband K. Surya Rao was an employee of Railway and during her life time she was working as technician of Grade-I holding T. No. 45069 in Shop No. 45 S-E Railway Wagon Workshop, Kharagpur. After the demise of K. Surya Rao, K. Saraswati has got employment in Railway at Compensatory ground. The adoptive mother of the minor and the natural mother of the minor petitioner died while she was in service.

The share of this minor adopted daughter of K. Saraswati out of Railway settlement dues since the death of K. Saraswati lying under the custody of Workshop Personnel Officer, S-E Railway, Kharagpur and in order to pay the said amount of this petitioner-elder brother of the minor has been directed by Railway Authority to submit non-natural guardianship certificate obtained from the Court of law vide letter No. SER/P-KGP/W/S/653/KS/1198 dt. 20.08.2016

In these circumstances, he has filed this petition praying for office appointment as guardian of the said minor sister both in person and property. With a view to entitling him to draw all the share of the minor sister from Railway and invest the same in Fixed Deposit Scheme etc.

The petitioner has deposed in this case as PW1 in all. The voter I card, death certificate of K. Saraswati, Aadhaar Card of minor have been exhibited 1, 2 & 3 respectively. Letter from the Railway Authority to the petitioner-elder brother has been exhibited 5. Adoption deed has been marked Exbt 6. One certificate issued by Head Master of Andra

Youth Men's Association School, Nimpura, Kharagpur has been exhibited 4 (with objection). The certificate issued by W.B.B.S.E in favour of the minor has been marked Exbt 7.

Dict & Corrt by me,

D.J.

District Judge,
Paschim Medinipur.

Criminal Revision No. 727 of 2016

Order No.....dt.....

This is a Criminal Revision u/s 397/398/399 Cr.P.C. The Revisionist has filed this Revision against the order dt. 02.09.2016, passed by Ld. Chief Judicial Magistrate, Paschim Medinipur in connection with Keshpur P.S case No. 04/2014 dt. 04.01.2016 in G.R Case No. 47/2014.

It appears from the materials on record that after investigation, police submitted police report against the accused persons and during hearing on 17.12.2015, Ld. Chief Judicial Magistrate without taking cognizance of the offence against that police report sent the case to the O.C, Kharagpur P.S. for reinvestigation.

After reinvestigation, new I/O had filed police report and again the defacto complainant lodged one "naraji petition" against the police report. After hearing of both parties on the point, Ld Chief Judicial Magistrate, Paschim Medinipur passed the order dt. 02.09.2016 and the prayer for the defacto complainant was considered and rejected by Ld. Chief Judicial Magistrate, Paschim Medinipur vide that order under challenge.

The defacto complainant, on being aggrieved at and dissatisfied with the said order, has filed this Revision on different grounds mentioned in the petition of Revision.

In course of hearing, Ld. Lawyer for the accused/ Revisionist appears before this Court and submits that the Revision is not legal and is not legally feasible to be admitted on different grounds.

Perused the materials on record.

The Ld. Lawyer for the Revisionist has highlighted the alleged irregularity in taking cognizance of the offence. Taking cognizance of an offence is not an interlocutory order and it is revisable.

In this factual circumstances, this Court after considering the entire materials on record admits the Revision for hearing.

Thus, the Revision is allowed.

To for hearing of Revision in full.

Call for LCR in the mean time.

Dict & Corrt by me,

D.J.

District Judge,
Paschim Medinipur

Order No.06, dt. 30.06.2017

Today is fixed for hearing dt. 23.03.2017.

The Appellant has filed this petition stating therein that the sole Respondent of this T.A died on 31.01.2017 leaving behind his two sons, three daughters and one widow as his heirs and description of those legal heirs have been duly mentioned in the petition under consideration.

He has prayed for a direction for dilution of the name of the said Respondent and substitute his those legal heirs as mentioned above in the prayer.

Heard.

The prayer is considered and allowed.

Let the memo of T.A be amended accordingly and the legal heirs of the sole Respondent since deceased be substituted as prayed for.

This prayer is considered and allowed.

The Appellant is hereby directed to file amended memo of T.A as to take necessary step upon the substitution as well as added Respondent.

Tofor further order.

Dict & Corrt by me,

D.J.

District Judge,
Paschim Medinipur

Later :-

Dated 30.06.2017

The record was returned by the Ld. Additional Sessions Judge Jhargram for curing some defect vide order No. 04 dt. 29.04.2013. On receipt of the same it was found that the record was committed by the Ld. ACJM Jhargram on 18.03.2013 and in that order the record was committed against all the accused persons except accused Tapan Das who was not produced from Ghatsila Correctional Home, despite of several orders were passed for the production of the said accused. Resultantly, the case was filed for present against accused Tapan Das and the record was committed.

After that as soon as the case record was registered as Sessions Case, the same was transferred to the Ld. Additional Sessions Judge, Jhargram for disposal.

Now the accused Tapan Das has been produced from Jhargram correctional Home and order has been passed on 30.06.2017 for release of the accused on bail subject to the satisfaction of Ld. ACJM-1, Jhargam.

Hence, there is no impediment in proceeding of the case. Hence, return Sessions Case along with LCR (GR 474/2011) to the transferry Court with a direction to send the LCR to the ACJM-1 Jhargram for commitment against the accused Tapan Das.

To date i.e 30.11.2017 for appearance before the Ld. Additional Sessions Judge, 1st Court, Jhargram by all the accused persons who are already on bail.

Fix 14.07.2017 for appearance of the accused Tapan Das, if on bail i/d, 14.07.2017 for production before the Ld. Additional Sessions Judge, 1st Court Jhargram.

Dict & Corrt by me,

S.J.

Sessions Judge,
Paschim Medinipur

J. Misc 47 of 2017

01, dtd 01.07.2017

The record is put up by a petition.

OP appears before this Court by filing Vokatnama along with Written Objection against the petition u/s 24 of the C.P.C.

It appears from the record that the date for appearance of the OP has already been fixed on 16.08.2017.

Ld. Lawyer for the OP submits that early hearing of the case is necessary for the speedy disposal of the Mat Suit which is now pending before the Ld. Additional District & Sessions Judge, 7th Court, Paschim Medinipur.

Let the written objection be kept with the record.

Fixing 12.07.2017 for hearing of the petition u/s 24 of the C.P.C.

Inform both sides.

Thus, the case is shifted back to this day.

Necessary entry may be entered in the cause list and diary.

Dictt and Corrt by me

D.J.

District Judge
Paschim Medinipur

10, dtd 01.07.2017

Today is fixed for hearing of the petition dt. 16.12.2016 filed by the Appellant stating therein that the Respondent No. 4 died on 05.10.2016 leaving behind his two sons and widow and their names and details have been mentioned in the substitution petition under order 22 rule 4 of the CPC under consideration.

Haziran is filed on behalf of the Respondent-State and haziran on behalf of the Respondent No. 7, 12 & 13 is also filed but none is present on behalf of either of the Respondent at the time of hearing of the petition.

After hearing of Ld. Lawyer for the Appellant and after going through the petition, this Court thinks that this petition has been filed within time and the prayer is fit to be allowed.

In this circumstances, the name of the Respondent No. 4, since deceased, be deleted and the name on his legal heirs as mentioned in the schedule of this petition be substituted.

It appears from the order No. 7 dt. 08.03.2017 that the amendment memo of appeal and prayed for substitution has already been filed though by that time that prayer was till pending.

However, let the amendment memo of appeal be kept with the record treating the same that it was filed after that substitution and amendment of appeal.

ToLCR.

Dictt and Corrt by me

D.J.

District Judge
Paschim Medinipur

06, dtd 01.07.2017

The Appellants file hazira. Today is fixed for admission of the appeal.

Heard the Ld. Advocate for the Appellants. He has moved the petition for admission of the Appeal.

Perused the case record and certified copy of the impugned order dtd. 08.12.2016 & decree dtd. 20.12.2016 passed by the Civil Judge (Jr. Div.), Ghatal, Paschim Medinipur in T.S. Case No. 24/2007 along with certified copy of the impugned order. It appears that the appeal is filed within time and so the appeal is admitted.

Issue notice upon the Respondent. Requisite at once.

The Respondent is present.

The petition praying for stay of the operation of the decree is taken up for hearing and order.

Heard both sides.

Ld. Lawyer for the Appellant submits that it is not a case of Landlord and tenant dispute.

In this case, the Tenant-Appellant is denied that she ever tenant under the Respondent-Landlord.

He submits that if during the pendency of this Appeal, he is evicted from the said premises then the entire object of the said premises will be frustrated.

Ld. Lawyer for the Appellant appears and submits that the tenant has no authority of the challenge title of the Landlord. If the enforcement of the order under challenge is stayed then under veil of that order, this erring tenant will continue his illegal possession over the suit property.

Perused the materials on record.

It appears from the entirety of the record that from the very beginning, the Appellant had been denying the relation of tenant and landlord. That does not tantamount to the denying of the title of the Landlord.

That apart, if during the pendency of the Appeal, the decree is executed then the entire object of the Appeal will be frustrated and in this scenario, this Court comes to a conclusion that for the ends of justice and to prevent miscarriage of justice, the prayed for prayer for stay of operation of the decree is considered and allowed.

The force of operation of the judgement and decree under challenge in this Appeal is hereby stayed till further order or disposal of the Appeal which ever is earlier.

To..... for LCR.

Dictt and Corrt by me

D.J.

District Judge
Paschim Medinipur

Misc Appeal 40 of 2017

02, dtd 01.07.2017

The Appellants file hazira. Today is fixed for admission of the appeal.

Heard the Ld. Advocate for the Appellants. He has moved the petition for admission of the Appeal.

Perused the case record and certified copy of the impugned order dtd. 16.06.2017 passed by the Civil Judge (Jr. Div.), Ghatal, Paschim Medinipur in T.S. Case No. 55/2017 along with certified copy of the impugned order. It appears that the appeal is filed within time and so the appeal is admitted.

Issue notice upon the Respondents. Requisite at once.

The application u/s 39 of rule 1 & 2 read with section 151 Cr.P.C is taken up for hearing.

It appears from the petition itself that the applicant has prayed for interim injunction order restraining the Defendant-Respondent from causing any disturbance in the peaceful possession of the Plaintiff-Appellant in respect of Plot No. 308 and 309 as mentioned in the schedule. It appears from the filed paper that the property in question belong to the deity Sri Sri Rakshakali Thakurani and the Defendant group are sebaite in respect of that deity so far as the settlement record is concerned.

This Respondent-Defendant are son of the sebaite of the said deity. It also appears from the filed paper that out of those two plots, one plot being No. 308 by nature Shoshan Cremation ground meant for use by Hindu people at large, second one is Plot No. 309 which is pond by nature.

The Appellants are inheritants of the village in which the deity exist. It is also pertinent to mention here that in the memo of appeal petition, it has been stated therein that the petitioners are sebaite of the said deity. Before the Ld. Trial Court when similar petition was moved, the Court considers the petition and dispose of the same vide order dt. 16.06.2017 in which the Ld. Court comes to a conclusion that, these petitioners- Plaintiffs fail to produce any paper that they are in possession of the suit property as on this day as sebaite.

In this factual premises and after considering papers and the status of these petitioners, this Court finds no reason to restrain the Respondents as prayed for by the Plaintiffs without hearing the Respondents.

In this circumstances, the prayer is considered and **rejected**.

Let the LCR be called for.

Fix for LCR.

Dictt and Corrt by me

D.J.

District Judge
Paschim Medinipur

Later :-

It is now 3:45 pm. None is present on behalf of the petitioner despite on repeated calls and the petitioner now is absent without any prayer or representative.

In this circumstances, this Court thinks that this petitioner has lost its interest over this pending proceeding. That apart, if such pending proceeding is being dragged for indefinite period passed in favour of the Respondent will be frustrated without any fault from the Respondent's end.

In this circumstances, it is ordered that the J. Misc be and same is hereby dismissed for default.

Dictt and Corrt by me

D.J.

District Judge
Paschim Medinipur

J. Misc 79 of 2004

64, dtd 05.07.2017

Today is fixed for hearing of the petition dt. 14.11.2014.

Before entering into the discussion of this petition under consideration the following facts may be stated for convenience sake.

One Baneswar De had filed this petition u/s 276 of Indian Succession Act praying for probate of the will executed by Haribala De appointing him as executer of the said will.

On 14.11.2014 three petitioners namely Subhas De, Balai De and Kanai De being sons of Baneswar De filed this petition stating therein that their father Baneswar Dey died on 12.12.2012 and they were not aware of the pending probate case which was filed at the instance of their father.

After knowing about the existence of the pending case they have filed this petition stating therein that their names may be substituted in place of their father to proceed with the case and the pending J. Misc be transposed or converted to Letter of Administration or Probate case.

Heard both sides.

Ld. Lawyer for the OP has got no objection.

After going through record and their submission, this Court finds justification behind their prayer.

In this circumstances, let their names be substituted as petitioners in place of their deceased father-petitioner and this J. Misc Case (Probate) No. 79/2004 is being converted to J. Misc Letter of Administration Case No. 79/2004.

Note this change accordingly.

Petitioners are directed to file an amendment petition in place of present one.

To for further order.

Dictt and Corrt by me

D.J.

District Judge
Paschim Medinipur

Title Appeal 28 of 2017

03, dtd 05.07.2017

The Appellants file hazira. Today is fixed for admission of the appeal.

Heard the Ld. Advocate for the Appellants. He has moved the petition for admission of the Appeal.

Perused the case record and certified copy of the impugned order dtd. 05.01.2017 & decree dtd. 17.01.2017 passed by the Ld. Civil Judge (Jr. Div.) Addl. Court, Garhbeta, Paschim Medinipur in T.S Case No. 04/2014 along with certified copy of the impugned order. It appears that the appeal is filed within time and so the appeal is admitted.

Issue notice upon the Respondents. Requisite at once.

The petition filed by the Appellant praying for stay of the judgement and decree under challenge is taken up for hearing and order.

It appears from the record that after consideration of both the parties' case, Ld. Trial Court decreed the suit declaration that the Respondents have got 1/3 share of the suit property and Appellants have been restrained from their possession. That means Ld. Trial Court has already considered and held that the Respondents are in possession of the property in question. Accordingly, there is no scope or prejudice if the prayed for stay order is not allowed at this stage.

Hence, the prayer is considered and rejected.

Call for LCR.

Fix for SR and LCR.

Dictt and Corrt by me

D.J.

District Judge
Paschim Medinipur

Act VIII- 14 of 2015

10, dtd 05.07.2017

Today is fixed for hearing of the petition dt. 26.04.2017 under order 6 rule 17 of the C.P.C filed by the petitioner stating therein that his wife died on 28.09.2014 but within mistake in the petition of the case the date of her death was wrongly written as 30.09.2014. He has prayed for amendment of the petition for that reason to correct her date of death.

It appears from the record that initially this case was fixed for exparte hearing and thereafter, the OP appeared and started to contest the case.

It also appears therefrom that on last occasion the OP was given opportunity to appear before this Court this day with W.O, if any.

OP filed a petition praying for time on the ground that the OP has left the station in connection with any urgent matter.

The petition is not moved.

In this circumstances, the prayer for time is considered and rejected.

Parties are directed to get ready at once.

Later :-

Ld. Lawyer for the petitioner is present.

OP is absent without any further step.

In this circumstances, the petition dt. 26.04.2017 is taken up for hearing and order.

Perused the materials on record.

Prayed for amendment is formal in nature. It has been prayed for correction of clerical mistake.

Having regard to these facts and circumstances, the prayer is considered and allowed.

Let the petition be amended in terms of this petition and the date of death of wife of the petitioner should be written as 28.09.2014 in place of 30.09.2014.

Thus, the prayer is considered and allowed.

Fix for evidence.

Parties are directed to get ready on the next date.

Dictt and Corrt by me

D.J.

District Judge
Paschim Medinipur

02, dtd 05.07.2017

The Appellant files hazira. Today is fixed for admission of the appeal.

Heard the Ld. Advocate for the Appellant. He has moved the petition for admission of the Appeal.

Perused the case record and certified copy of the impugned order dtd. 22.03.2017 & decree dtd. 29.03.2017 passed by the Ld. Civil Judge (Jr. Div.), 2nd Court, Paschim Medinipur in T.S Case No. 150/2011 along with certified copy of the impugned order. It appears that the appeal is filed within time and so the appeal is admitted.

Issue notice upon the Respondents. Requisite at once.

Call for LCR.

Fix for SR and LCR.

Dictt and Corrt by me

D.J.

District Judge
Paschim Medinipur

Act VIII- 11 of 2012

27, dtd 06.07.2017

Ld. Lawyer for the the Applicant is present.

The petition dt. 27.04.2017 filed by the Applicant is taken up for hearing and order.

It appears from the petition and submission of Ld. Lawyer that at present, this application u/s 8, 9 & 10 of the Guardians and Wards Act is pending claiming appointment of guardianship of two minor persons named in para 4 of this petition.

It has been stated in the mean time that the minor Syed Sahil has attained his majority. As per application his date of birth is 23.01.1999. Having regard to the submission and date of birth of this minor, it appears to me that in the mean time this minor attained his majority and there is no need to proceed with the case prayed for appointment of the guardianship in respect of the person and property of the minor.

In this factual circumstances, let the name of that minor Syed Sahil be removed with the note that now having attained majority and necessary amendment of the petition be made accordingly. After necessary amendment of the application, petition be filed afresh.

Fix for filing of the amended application and further orders.

Dictt and Corrt by me

D.J.

District Judge
Paschim Medinipur

J. Misc 107 of 2014

17, dtd 06.07.2017

Today is fixed for further status report from both the parties.

It appears from the record that on 29.09.2016 the adopted parents filed a status report stating therein that the adopted girl is now happy life with him and he has also stated that no property has yet not been acquired by the minor.

It appears from the record that on 07.02.2017 the said adopted father filed a similar status report stating therein that the child is leading happy life and no property is belonged to her and no property or money has been acquired by the minor in the mean time.

Having regard to the petition made by the adopted father supported by an affidavit and submission of Ld. Lawyer, this Court comes to a conclusion that the status report of the adopted father is satisfactory and that accepted.

It is pertinent to mention here that on earlier occasion on 07.02.2017, the status report dt. 29.09.2016 was also found satisfactory.

In this circumstances, let the adoption case be dropped.

Dictt and Corrt by me

D.J.

District Judge
Paschim Medinipur

Other Appeal 39 of 2017

02, dtd 07.07.2017

The Appellant files hazira. Today is fixed for admission of the appeal.

Heard the Ld. Advocate for the Appellant. He has moved the petition for admission of the Appeal.

Perused the case record and certified copy of the impugned order dtd. 12.06.2017 & decree dtd. 16.06.2017 passed by the Civil Judge (Jr. Div.), 2nd Court, Paschim Medinipur in O. S. Case No. 242/2007 along with certified copy of the impugned order. It appears that the appeal is filed within time and so the appeal is admitted.

Issue notice upon the Respondents. Requisite at once.

The petition under order 39 rule 1 & 2 read with section 151 of C.P.C. filed by the Appellant is taken up for consideration.

Ld. Lawyer for Appellant submits that unless the prayed for ad-interim stay order is accorded in favour of the Appellant restraining the Respondent from changing the nature and character of the suit property or from demolishing any structure raised by the Appellant till the disposal of the Appeal.

Perused the crux of the case of both the parties.

It appears therefrom that the Plaintiff is on permissive possession or under license of certain property under Respondent-Rail.

It has been alleged that the Respondent-Rail tried to demolish the construction of that land which the Appellant constructed as per sanctioned plan and with prior approval and in support of his those contentions, he has filed those papers at the time of hearing of this injunction petition which was previously filed before the Ld. Trial Court and those papers have already been gone through on Judicial scrutiny and despite the Ld. Court did not find any case in favour of the Plaintiff- Appellant.

In accommodating all the facts and circumstances, this Court thinks that without hearing other side the prayed for interim relief cannot be granted at this stage. This observation has got no bearing with the merit of the Appeal.

Thus, this prayed for interim relief in the form of restraining order against the Defendant is considered and rejected.

Call for LCR.

Fix α for SR and LCR.

Dictt and Corrt by me

D.J.

District Judge
Paschim Medinipur

Act VIII- 02 of 2010

01, dtd. 11.07.2017

The record is put up by a petition.

It appears from the petition that the petitioner has filed certified copies of exhibit 3, 3/(a), 4 & 4/(a). He has prayed for return of those original documents substituting those certified copies. It appears from the record that those documents are original mark sheets.

Let those certified copies of those documents be substituted in place of those original exhibited documents and be returned to the party with an undertaking that they shall file the same as and when required.

They have also prayed for return the un-exhibited documents which are lying in the record and which are numbered as 5, 6, 7 & 12 in the firsti of the said documents.

Let all those un-exhibited documents be returned to the person who submits the same with an undertaking that they shall file the same as and when required.

Dictt and Corrt by me

D.J.

District Judge
Paschim Medinipur

Other Appeal- 93 of 2016

07, dtd. 12.07.2017

Today is fixed for hearing of the petition dt. 22.06.2017 u/s 151 of the CPC filed by the Appellant stating therein that he has filed this other appeal against the order and decree dt. 07.01.2017 passed by Ld. Civil Judge, (Jr. Divn.), Ghatal, Paschim Medinipur in connection with J. Misc case No. 36/2013. That petition prayed for permission under 8 & 9 of WBLR Act 1955.

But in fact the present Other Appeal should be mentioned as Misc Appeal in stead of Other Appeal. He has prayed for correction of cost title of the Appeal accordingly.

Heard both sides.

Ld. Lawyer for the Respondent opposes the prayer on the ground that this sort of correction will change the nature of the Appeal and other aspects too and there is no scope to change the nature of the Appeal by the petition u/s 151 of the C.P.C.

Having regard to the materials on record, this Court considers that the Appellant should file a fresh Appeal as Misc Appeal against the order dt. 07.11.2016 and the present memo of appeal should be returned at this stage because admission of the Appeal is yet pending.

In this circumstances and in view of the submission of both parties, the prayer is allowed partially in the following terms and conditions.

Let this Other Appeal should not be admitted as the name and nature of the Appeal is misnomer.

Let the memo of Appeal be returned with the findings that Other Appeal is not admitted.

The Petitioner-Appellant is hereby given liberty to file afresh Misc Appeal against the order and on that occasion its limitation of filing afresh Misc Appeal will start running from this date of order.

Let the findings be noted in the register as not admitted.

Dictt and Corrt by me

D.J.

District Judge
Paschim Medinipur

J. Misc- 76 of 2009

14, dtd. 13.07.2017

Today is fixed for hearing of the J. Misc.

The petitioner filed a petition stating therein that the OP No. 1 died on 15.08.2016 and he prays for permission to substitute the heirs of the deceased-Respondent.

Ld. Lawyer for the OP is present.

The petitioner is given opportunity to take necessary step for substitution of heirs of the deceased-OP subject to the hearing of both the parties.

Fixhearing on the point of substitution in the mean time.

Both the parties are directed to take proper step.

Dictt and Corrt by me
D.J.

District Judge
Paschim Medinipur

Other Appeal- 102 of 2015

15, dtd. 13.07.2017

Today is fixed for hearing of the petition dt. 29.06.2017 and also appeared on 03.03.2017 with the same petition under order 41 rule 3 of the CPC has been filed by the Plaintiff- Appellant.

In fact both the petitions are same but first one is incomplete and second one is complete.

In this circumstances, as per prayer of both the parties first one dt. 29.06.2016 is treated not pressed and second one dt. 03.03.2017 is taken up for hearing and orders.

Ld. Lawyer for the Respondent is present. Prayed for amendment is very very formal in nature. The mistake caused due to typographical mistake, it should be written as North West in place North East.

Ld. Lawyer for the other side does not raise objection.

In this circumstances, prayed for amendment of the memo of appeal is considered and allowed.

Let the memo of appeal is amended in terms and condition of the schedule of the petition dt. 03.03.2017.

Thus, the petitions are disposed of.

FixLCR.

Dictt and Corrt by me
D.J.

District Judge
Paschim Medinipur

Misc Appeal- 89 of 2016

07, dtd. 13.07.2017

The petition u/s 151 of the CPC dt. 28.09.2016 filed by the Appellant praying for stay of operation of the order dt. 25.05.2016 passed by Civil Judge (Jr. Divn) Ghatal, Paschim Medinipur in connection with 71/2013. It appears that that the petition was under order 39 rule 1 & 2 read with section 151 of the CPC.

Ld. Lawyer for the Appellant submits that it is a case of recovery possession in respect of the property which is admittedly under the possessions of the Defendant. Accordingly, this stay order is found not justified and causing prejudice to the Defendant.

He further submits that if it is found or it is a case of the Plaintiff and that the property in question is in the possession of the Defendant then without trial why that order of restrain should be passed.

In the order impugned it appears that actually there was restrain order as to further construction of the suit property.

After going through the order, it appears that subsequently upon the construction on the disputed land of the Defendant, the Plaintiff filed a petition before the authority and there was direction upon the present Appellant to remove the construction and despite that the Defendant neither stopped the construction nor demolished the existing construction.

Before passing that order impugned Ld. Trial Court considered all these facts and circumstances, and in this circumstances this Court thinks that without hearing other side the prayed for stay order should not be passed.

Accordingly, the prayer for stay order is considered and rejected.

Thus, the order refusing the prayed for stay order does not attach on merit of the pending misc appeal.

Dictt and Corrt by me

D.J.

District Judge
Paschim Medinipur

J. Misc 24 of 2011

56, dtd. 19.07.2017

Ld. G.P appears and submits that in this case the State is not the party.

But the facts remains on the question of registrar. The question of dispute cropped up regarding the valuation of the considering money and centering that aspect the registrar was directed by this Court to appear before this Court and thereafter, this matter is pending before the Hon'ble High Court and for that reason he prays for time.

Other side is present.

Having regard to the submission of both the parties the prayer is considered and allowed.

Fix for further order and hearing of the petition.

Dictt and Corrt by me

D.J.

District Judge
Paschim Medinipur

Title Appeal- 57 of 2012

56, dtd. 19.07.2017

Today is fixed for hearing of the petitions under order 22 rule 3 of the C.P.C dt. 20.04.2016& 22.02.2017.

Ld. Lawyer for both the parties are present.

It appears from the petition dt. 22.04.2016 that the Appellant No. 1 (Ka) namely Sabitri Maity died on 05.10.2015 but her heirs namely one son and two daughters are already on record as one 1(Ga), 1(Kha) and 1 (Gha).

In this circumstances, the petitioner Appellant has prayed for necessary order.

Similarly, in another petition dt. 22.02.2017 it has been reported that the Appellant No. 3 (Ka) namely Neoti Maity died on 04.12.2016 leaving behind her two sons and two daughter who are already on record as Appellant No. 3 (Kha), 3 (Ga) and 3 (Gha) and 3 (Una).

He prayed for necessary order so that the title cause of memo of appeal is corrected accordingly.

After going through the materials on record and hearing of both the parties, the prayer as made in this two petition is hereby considered and allowed.

Let the name of the Appellant No. 1(Ka) and 3 3(Kha) be deleted from the cost title of memo of appeal since deceased.

Note it accordingly.

Thus, both the petitions are disposed of after hearing of both the parties.

Fix awaiting LCR.

Dictt and Corrt by me

D.J.

District Judge
Paschim Medinipur

Other Suit 04 of 2016

10, dtd. 19.07.2017

Today is fixed for evidence.

Ld. Lawyer for the executor files a petition praying for time on the ground that Title Suit No. 1049/2016 is pending before another Court centering over the self-same property of the stay petition and that suit is pending.

Ld. Lawyer for the Testator opposes the prayer.

Perused the materials on record.

Considered the materials of the petition.

This Court thinks that it should not be the ground for adjourned evidence of this case for independent party or till the disposal of the suit petition or in the form of partition etc.

however, having regard to the submission, the prayer for time is considered and allowed for the last time.

Parties are directed to get ready on the next date fixed.

Dictt and Corrt by me

D.J.

District Judge
Paschim Medinipur

J. Misc 16 of 2013

28, dtd. 19.07.2017

This is an application u/s 8 of the Hindu Minority of Guardians Act filed by the Petitioner Moutusi Sarkar praying for permission to sell the property mentioned in the schedule belonged to her minor daughter namely Priyanka Sarkar. Her date of birth is 28.12.1998.

Today is fixed for hearing of the petition dt. 24.03.2017.

In the first mentioned petition, the Petitioner has stated therein that in the mean time the minor has attained her majority and for that reason she is not willing to proceed with the case and prays for dismissal of the J. Misc case for non prosecution.

She has also filed another petition praying for return exhibited and un-exhibited documents lying with the record.;

perused the admit card where from the date of birth of this minor is apparent and it could be had therefrom that she has already attained her majority during the pendency of the J. Misc case.

Subsequent upon the case, this Court accords the prayer as mentioned in the earlier petition.

Resultantly, this Court is of the opinion that all the documents be returned lying with the record as exhibited and un-exhibited documents are no more necessary in this case. Those may be returned to the person who filed with some undertaking.

Hence, it is

ORDERED

that both the petitions are considered and allowed. The J. Misc case be and the same is hereby dismissed for non prosecution.

All the exhibited and un-exhibited documents be returned to the Petitioner with an undertaking to re-file the same, if those at all required.

Dictt and Corrt by me

D.J.

District Judge
Paschim Medinipur

J. Misc 22 of 2012

29, dtd. 01.07.2017

In course of further hearing of this J. misc case, it appears to me that from the deed of adoption dt. 20.11.2009 that adoptive father, Samir Kumar Mukherjee while he was at 59 years old, adopted the minor for secular purpose and the description in the deed that the adoption was materialized to continue the lineage of the adoptive father and to secure spiritual benefit and to maintain pinta relationship and to perform other religious obsequies to his departed soul.

He retired from service on superannuation on 28.02.2010 and expired on 16.12.2011. He was bachelor and having no competent person to perform his last ritual after his demise. The natural spirit of this adoption and thereafter, his superannuation of death would be that at the one hand the children will perform the ritual and go on performing ritual and also he will be entitled to the property and other benefits of the service he left behind. Unless it is found from the paper and other that all benefits which he acquired at the time of his retirement and all fortune which he has left at the time of death inherited by this adopted son. If it is found that no..... then there would be suspicious that the adoption was led by ulterior motive to grab and enjoy the family pension benefit. Unless or until, these points are not satisfied, this Court is not in a position to consider the adoption was bona fide and legal and the petitioner may be accorded with relief as prayed for. It is also a peculiar thing which appears to me that the after 2 years from the adoption, the person died and the child went back to his natural father and this petition has been filed by the natural father. This aspect has also accelerated the suspicious of this Court in addition to that it appears that the deed in question which has been marked Exbt 3 has not been proved in the procedure laid down in the Evidence Act. Accordingly, the petitioner is to comply with the procedure of Evidence Act to make this Exbt 3 believable and the part of the record.

To further hearing and the petitioner is hereby directed to take necessary step as per my observation made above.

Dictt and Corrt by me
D.J.

District Judge
Paschim Medinipur

Other Suit 07/2016

11, dtd. 20.07.2017

Today is fixed for hearing of the petition dt. 14.12.2016 filed by the petitioner stating therein that in the probate petition he has mentioned the value of the estimation of Rs. 9,90,000/- and the valuation report from the collector is pending for a long period of time.

In this circumstances, he has prayed for permission to proceed with the case with an undertaking that as and when the report will come, he will be ready to pay excess amount of valuation if as per report it is found otherwise.

It appears from the endorsement that the valuation report was called for from the collector on 19.09.2016 but it was re-issued on 07.11.2016 vide memo No. 475. This Court thinks that before dismissal of this suit one reminder should be sent to the collector to call for report.

Let a copy of this order along with earlier correspondence, if any, be sent to the collector requesting him to take necessary step for submission of the report within coming two month.

Fix for further order and report in the mean time.

Dictt and Corrt by me
D.J.

District Judge
Paschim Medinipur

MAC Case No. 398 of 2011

35, dtd. 20.07.2017

Today is fixed for hearing of the J. Misc case under order 9 rule 9 of the CPC.

It appears from the record that one MAC Case was filed on 20.12.2011 and ultimately on 20.08.2014 it was dismissed for default as the petitioner was found absent without any step for a long period of time and he did not submit any show cause.

Thereafter, on 19.09.2014, he filed one a petition under order 9 rule 9 of the CPC praying for restoration of the said MAC Case after setting aside the order of dismissal for default. This day, the petitioner files haziran. But on repeated calls he is not present. On the other hand, Ld. Lawyer for the OP is present.

From the age of the case and also from the age of the J. Misc case, this Court comes to a conclusion that the petitioner, at any point of time was diligent in proceeding with the case and this day again he is absent without any step.

In this circumstances, this Court finds no reason to adjourn the sou moto case. Hence, it is

ORDERED

that the J. Misc case be and the same is hereby considered and rejected and dismissed for default.

Dictt and Corrt by me
D.J.

District Judge
Paschim Medinipur

Title Appeal - 12 of 2016

11, dtd. 25.07.2017

Today is fixed for hearing of the petition dt. 16.09.2016 under order 22 rule 4 of the C.P.C.

It appears from the petition and submission of the Ld. Lawyer that the Respondent No. 4 died on 14.08.2016 leaving behind as many as 4 legal heirs who are already parties of this case as Respondent 1,2,3 & 6.

In this factual premises, as per his prayer, the name of the Respondent No. 4, since deceased, be deleted from the cause title.

Another petition dt. 02.03.2017 under order 22 rule 4(4) is taken up for hearing.

It appears from the petition and submission of the Ld. Lawyer that Respondent No. 9 died. This Respondent No. 9 did not contest the suit before the Ld. Trial Court as Defendant No. 9. He has prayed for exemption and substitution of legal heirs of Respondent No. 9.

Heard both sides.

It appears there from that after the death of this Respondent No. 9 his legal heirs may be given opportunity to decide as to whether they will contest the same or not.

Hence, the prayer is considered and rejected.

Dictt and Corrt by me
D.J.

District Judge
Paschim Medinipur

Money Execution Case - 24 of 2016

06, dtd. 25.07.2017

Today is fixed for hearing of the petition dt. 17.02.2017 in which the Dhr prayed for issuance of warrant of attachment against the Jdr on the ground stated therein.

But the petition is not pressed by the Dhr. Hence, the petition is disposed of as non prosecution.

Ld. Lawyer for the Dhr files a petition praying for permission to withdraw the case on the ground that there dispute has been settled amicably.

Heard both sides.

Perused the materials on record.

It appears that withdrawal prayer is voluntarily and consciously filed before this Court.

Hence, the praying for permission is considered and allowed.

Hence, the M. Exe Case stands disposed of for withdrawal.

Dictt and Corrt by me
D.J.

District Judge
Paschim Medinipur

J Misc - 47 of 2017

04, dtd. 27.07.2017

Today is fixed for hearing of the petition u/s 24 of the C.P.C.

The petitioner Mou Basu (Barman) files a petition Under Order 6 Rule 17 of the C.P.C praying for amendment of the petition for the following grounds. In fact, two Mat Suits cases being No. 855/2015 and 305/2014 are pending before the Ld. Additional District & Sessions Judge, 7th Court, Paschim Medinipur between the same parties.

The petitioner has filed this J. Misc case u/s 24 of the C.P.C praying for withdrawal of the Mat suit 855/2015 from the Ld. Court.

She has further stated that inadvertently she has failed to mention the number of the two cases for withdrawal. She had every intention to file petition for withdrawal of both Mat Suits.

In this circumstances, she has prayed for amendment of the petition to include fact that both the cases numbered above may be withdrawn and transferred to another Court for disposal.

Ld. Lawyer for the OP submits that this is nothing but delectary tactic. He has further submits that in one petition u/s 24 CPC, two prayer cannot be considered.

If it is found or it is apprehended that one of the parties otherwise of the apprehension that she will not get justice before the particular Court. That apprehension equally remains in force in another case between the same party.

Accordingly, this Court finds justification behind the prayer for amendment but at present this Court finds no justification to conclude that apprehension is true or at all based on fact.

In this factual premises, it cannot be said that two separate prayers or reliefs will be incorporated in one petition u/s 24 CPC, if the amendment is allowed. It is also not true that these are two separate prayers.

In this circumstances, this Court finds no reason to reject this petition.

Fix 05.08.2017 hearing of the amendment petition, objection, if any, in the mean time.

Fix 16.08.2017 is also for hearing of the J. Misc case.

Dictt and Corrt by me
D.J.

District Judge
Paschim Medinipur

Title Appeal - 17 of 2017

07, dtd. 29.07.2017

Today is fixed for hearing of the petition dt. 22.05.2017.

Respondent No. 1 appeared by filing a Vokatnama.

The petition dt. 22.05.2017 is taken up for hearing.

It appears from the petition that the Respondent No. 3 & 4 have not contested the suit before the Ld. Trial Court despite serving notice.

In this circumstances, the Appellant has prayed for exemption from taking step upon non-contesting Respondent No. 3 & 4 of this Title Appeal for continuation of earlier suit.

In accordance with under order 22(4) rule 4(4) of the CPC the prayer is considered and allowed.

Appellant is hereby exempted from taking step upon those Respondent No. 3 & 4 who did not contest the suit before the Ld. Trial Court despite serving notice.

Another petition dt. 22.05.2017 filed by the Appellant is taken up for hearing.

It appears from the submission that during pendency of that suit before the Ld. Trial Court, Defendant no. 2 that is Respondent No. 2 of this Appeal died on 13.11.2010 and her name was deleted from the cause title of plaint on 01.12.2010.

But the name of the Defendant No. 2 is appearing of this memo of appeal and that has been caused by mistake.

In this circumstances, the Appellant has prayed for deletion of her name from the cause title of memo of appeal.

Heard. Considered. The prayer is considered and allowed.

Let the name of the Respondent No. 2 be deleted from cause title of Title Appeal.

Dictt and Corrt by me

D.J.

District Judge
Paschim Medinipur

Act VIII - 13 of 2015

09, dtd. 29.07.2017

Today is fixed for hearing of the case under section Act VIII.

The Petitioner Smt. Narayani Har has prayed for an order to be appointed as Court guardian of Anshuman Har whose date of birth is on 23.06.1999.

Ld. Lawyer for the Applicant is present with a petition along with the copy of the date of birth of the minor stating therein that in the mean time the minor in question has attained his majority and for that reason the Petitioner does not want to proceed with the case any further and prays for necessary order as to disposal of the case for non-prosecution.

Perused the materials on record and date of birth of the minor and it appears there from that the minor has attained his 18 years old on 23.06.2017.

In this circumstance, the prayer is considered and allowed.

Hence, it is

ORDERED

that the Case is be and the same is hereby disposed of as non-prosecution on the ground that the cause of action of the case is no more in existence.

Dictt and Corrt by me

D.J.

District Judge
Paschim Medinipur

Title Appeal - 03 of 2017

07, dtd. 05.08.2017

Today is fixed for hearing of the substitution petition dt. 23.03.2017.

It appears from the prayer that on 31.01.2017 the sole Respondent died leaving behind two sons and three daughter and one widow.

Their details have been mentioned in the petition.

Ld. Lawyer for the Respondent has prayed for substitution of those legal heirs left behind by the sole Respondent in this case.

The prayer is found made in time and it is considered and allowed.

Let the name of the sole Respondent be deleted from the cause title as deceased and the names of these persons named in the petition be substituted in his place in the serial as mentioned thereon.

Let the Memo of Appeal be amended accordingly.

Ld. Lawyer for the Appellant is hereby directed to submit amended Memo of Appeal in terms of this order.

Dictt and Corrt by me

D.J.

District Judge
Paschim Medinipur

J. Misc - 44 of 2012

28, dtd. 05.08.2017

Today is fixed for hearing of augment of this J. Misc case. This petition was filed by Himadri Sekhar Das praying for permission to sell the property mentioned in the schedule of this petition stood in the name of his minor son. As per petition and filed papers his date of birth is on **29.04.1999**.

Ld. Lawyer for the Petitioner files a petition stating therein that in the mean time the minor son has attained his majority and for that reason he does not want to proceed with the case.

Taking his date of birth as on **29.04.1999**, it appears that he has attained his majority and for that reason this case has also turn into infructuous.

In this circumstances, the prayer is considered and allowed.

The case is dismissed for non- prosecution and his prayer for returning all the documents is considered and allowed.

Let all the documents lying with the record be returned to the person with an undertaking to file the same as and when called for.

Dictt and Corrt by me

D.J.

District Judge
Paschim Medinipur

J. Misc – 86 of 2015

16, dtd. 07.08.2017

Today is fixed for hearing of the petition dt. 15.07.2017.

In the said petition, the Appellant has prayed for withdrawal of the case on the ground that their dispute has been dissolved amicably beyond the Court.

Other side has raised no objection.

Heard the Ld. Lawyer for the Appellant.

Hence, the prayer is considered and allowed.

Hence, it is

ORDERED

that the Misc Appeal stands withdrawn.

Dictt and Corrt by me

D.J.

District Judge
Paschim Medinipur

Title Appeal – 09 of 2017

04, dtd 07.08.2017

Today is fixed for hearing of the limitation petition under 5 of the Limitation Act.

It appears from the record that the Respondent No. 1 to 4 appeared before this Court by filing power and the prayer for filing Written Objection.

Today all the Respondent are absent without any step on call.

The limitation petition is taken up for hearing and order.

It appears from the petition itself that the State/ Appellant failed to file the Appeal within time due to negligence of the law clerk to collect certified copy which was ready to delivery on 16.01.2016 but it was received on 22.12.2016.

Hence, there was a delay of 30 ays in filing the case.

Perused the petition.

Heard the Ld. G.P.

Considered the period of delay and the reason assigned thereon.

The reason assigned is sufficient to explain the delay.

Hence, the prayer is considered and allowed.

The delay is condoned.

The Appellants file hazira. Today is fixed for admission of the appeal.

Heard the Ld. Advocate for the Appellants. He has moved the petition for admission of the Appeal.

Perused the case record and certified copy of the impugned order dtd. 23.02.2016 and decree dtd. 01.12.2016 passed by the Civil Judge (Jr. Div.), Jhargram in T.S Case No. 110 of 2012 along with certified copy of the impugned order. It appears that the appeal is filed within time and so the appeal is admitted.

Issue notice upon the Respondents. Requisite at once.

Call for LCR.

Fix for SR and LCR.

Dictt and Corrt by me

D.J.

District Judge
Paschim Medinipur

Misc Appeal – 51 of 2017

04, dtd 07.08.2017

Today is fixed for hearing of the stay petition.

Ld. Lawyer for the Other Side filed a written objection.

It appears from the record that the Ld. Trial Court after hearing the petition allowed the J. Misc and the Petitioner was declared to get the decree of presumption in 'Ka' schedule property.

Ld. Lawyer for the Petitioner submits that there is an execution petition pending.

Though the No of the execution petition has not been mentioned in this stay petition.

Ld. Lawyer for the OP submits that without mentioning the No of the execution petition, this Court may not consider the existence of that execution petition. He further submits that there should be a formal petition praying for condonation of delay. On the point of condonation of delay, I am to state that on previous occasion, this Appellant filed an Appeal in the form of other suit.

That petition was returned to the Appellant with a liberty to file afresh in proper format. In the said order it was stated therein that the limitation will run from the date of returning of the petition.

In this circumstances, this Court thinks that whenever this petition was filed within time from the date of returning of the earlier petition there may not be any separate petition praying for condonation of delay.

Having regard to the nature of the Appeal and the prayer made thereon and the decree under challenge, this Court comes to a conclusion that unless it is stayed in time, the object of the Appeal will be frustrated.

Hence, the prayer for stay of all further proceedings of J. Misc No. 36/2013 and other case arising therefrom till further order or disposal of this Misc Appeal is disposed of on contest.

Call for LCR.

To date for LCR

Dictt and Corrt by me

D.J.

District Judge
Paschim Medinipur

ACT VIII – 04 of 2014

19, dtd 07.08.2017

Today is fixed for hearing of argument and hearing of the minor girl.

Opposite Side, Uttam Kapas at who custody the said minor Rittima is living, has produced the minor namely Rittima before this Court in presence of other side.

She along with a lady constable is taken to my chamber for interrogation and interaction. On interrogation, this Court came across to the fact that she is a student of class VI of Vidyasagar Sishu Niketan. She is very much mentally alert and in a position to response all reasonable questions. In course of investigation, this Court come to the conclusion that she is very much fond of her present parents and she is very much happy with her parents and with her sister. Her standard of education is very high. She is very much happy in the present situation with her family members. This minor girl even submitted that she does not know, actually who is her mother's mother. I think that this statement actually not based on fact that she know her but she tries to conceal the same. However, her living with the present parents and other family members is not at all beyond bad. Her this statement and mental attitude will be considered in the context of materials already adduced.

Dicth and Corrt by me

D.J.

District Judge
Paschim Medinipur

Misc Appeal – 56 of 2017

02, dtd 07.08.2017

Today is fixed for hearing of admission, injunction petition and written objection in the mean time.

It appears that there is a pending caveat at the instance of caveator, Ajoy Das. It is found from the filed papers that on 03.08.2017, copies of Memo of Appeal and injunction petition have been served upon the Ld. Lawyer of the caveator namely Kushal Mishra. During hearing of this admission petition and injunction, nobody is present on behalf of the OP-Respondent.

The Appellant files hazira. Today is fixed for admission of the appeal.

Heard the Ld. Advocate for the Appellant. He has moved the petition for admission of the Appeal.

Perused the case record and certified copy of the impugned order dtd. 29.07.2017 passed by the Civil Judge (Sr. Div.), 3rd Court, Paschim Medinipur in T.S Case No. 417/2017 along with certified copy of the impugned order. It appears that the appeal is filed within time and so the appeal is admitted.

Issue notice upon the Respondent. Requisite at once.

The petition under order 39 rule 1 & 2 u/s 151CPC is taken up for hearing and order.

Heard the Ld. Lawyer for the Appellant- Petitioner.

The petition under order 39 rule 1 & 2 u/s 151 CPC is taken up for hearing and order.

Heard the Ld. Lawyer for the Appellant- Petitioner

He submits that this Defendant- Respondent had sold out a specific portion of land to the Plaintiff- Appellant by a register deed of sale but that Defendant- Respondent was tried to encroach that portion of land which was already sold to him. It appears from the filed papers and other that the portion which was sold to the Petitioner has already been demarcated and fenced by boundary wall. That land in question under the Plaintiff- Appellant has been shown as schedule A in the plaint as there is an intervening boundary wall in between the land of the Plaintiff and Defendant. The question of physical encroaching is almost bleak. It has been alleged that the Defendant- Respondent has started construction over his land without any sanctioned plan from the Panchayet and encroached into the land of the Plaintiff.

Contd.....

Considered the prima facie case of the Plaintiff and convenience and inconvenience of both the sides and the extend of loss of both parties if the injunction is or is not allowed.

Having regard to all these facts and circumstances, this Court does not find any palusible reason to grant the prayed for relief in the form of interim injunction.

Hence, the prayer is considered and rejected.

Dictt and Corrt by me

D.J.

District Judge
Paschim Medinipur

Title Appeal – 56 of 2015

14, dtd 08.08.2017

Today is fixed for hearing of the petition dt. 07.11.2016.

It appears from the petition and from the submission of Ld. Lawyer for the Defendant- Respondent that the Respondent No. 4 died but his legal heirs already on record as Respondent No. 2, 3, 5 & 6.

In this circumstances, he has prayed for exemption to further substitute the legal heirs of the deceased Respondent No. 4.

Heard. None is present on behalf of the Respondent despite filing hazira.

Having regard to the materials on record and the submission, the prayer is considered and allowed.

Let the name and particulars of the Respondent No. 4 be deleted from the record since deceased.

Dictt and Corrt by me

D.J.

District Judge
Paschim Medinipur

Misc Appeal – 65 of 2015

19, dtd 08.08.2017

The petition dt. 28.04.2017 is taken up for hearing and order.

Despite filing hazira none is present on behalf of the Respondent.

It appears from the prayer that the Respondent No. 2 to 6 did not appear and contest before the Ld. Trial Court while the suit was heard.

Accordingly, they did not contest the same.

The Petitioner- Appellant has prayed for exemption from serving notice upon non-contested Respondent No. 2 to 6.

Heard. Perused the petition.

The prayer is considered and allowed.

The Appellant is hereby exempted from serving notice upon the non-contesting Respondent No. 2 to 6.

Accordingly, the petition is considered and allowed.

Fix for

Dictt and Corrt by me

D.J.

District Judge
Paschim Medinipur

Title Appeal – 14 of 2008

60, dtd 04.08.2017

The petition dt. 04.05.2017 filed by the Appellant under order 5 rule 9/5 of the CPC is taken up for hearing and order.

It appears from the petition and submission that the notice of appeal to Respondent 1A and 1F were sent by registered post with AD on 23.08.2013 but the notice has not been returned. Those notices were properly sent by registered post with AD.

In this circumstances, he has prayed for necessary order for taking that sending of notice as duly served.

Perused the filed postal initial receipt.

It appears therefrom that on 23.08.2013 the summons or notices of the Appeal were sent by registered post at correct address and acknowledgement card but that has yet not been received back. More than 30 days has been elapsed from such sending. It would, therefore, deem to have being served and presumption of service in law can be made in view of order 5 rule 9 of the C.P.C.

Hence, the prayer is considered and allowed.

Considering this prayer and the circumstance, it is deem and presumed that the notices of Appeal has duly been served upon the Respondent No. 1A & 1F.

Thus, the petition is disposed of.

It appears from the record that other Respondents have already appeared and the case against the Respondent No. 1A & 1F be heard as exparte as they did not appear despite sending notice upon them.

Dicth and Corrt by me

D.J.

District Judge
Paschim Medinipur

Criminal Misc – 3074 of 2017

03, dtd 28.08.2017

The record is put up by a petition.

It appears from the filed petition that the name of the petitioner in the original Criminal Misc case has been written as Sk. Sadek Ali but it should be written as Sader Ali.

In this circumstances, the petitioner has prayed for correction of the name of the petitioner of this Criminal Misc case which was already disposed of on 24.08.2017.

Heard. The prayer is considered and allowed.

Let the Misc case be corrected and let the name of the petitioner be read as Sk. Sader Ali in stead of Sk. Sadek Ali accordingly and all the terms and condition of the bail order shall remain as usual.

Let a copy of this order be sent to Ld. Court below for information.

Dictt and Corrt by me

S.J.

Sessions Judge
Paschim Medinipur

J. Misc – 60 of 2017

05, dtd 28.08.2017

This is a petition u/s 24 of the CPC.

The petitioner has prayed for withdrawal of the Misc Appeal 24/2016 pending before the Ld. E.C Court, Paschim Medinipur on the ground that the Court is lying vacant as the PO is undergoing long training and other reasons too.

Heard. Perused the materials on record.

The PO has resumed his duty. That apart, it is also pertinent to mention here that the PO is under order of transfer but at the same time it is also pertinent to mention here that the successor of the present PO is already under order of joining to this Court as his new assignment.

In this circumstances, this Court finds no reason to allow the prayer but at the same time this Court thinks that the pending J. Misc case which is pending for a pety long time may be disposed of by the PO as soon as possible and as well as his convenience.

This J. Misc case is thus disposed of.

Let a copy of this order be sent to the Ld. Court.

Dictt and Corrt by me

D.J.

District Judge
Paschim Medinipur

Title Appeal – 52 of 2013

33, dtd 28.08.2017

The record is taken up for hearing and order.

Delay already condoned as to the payment of cost and the cost has already been paid.

The Appellants file hazira. Today is fixed for admission of the appeal.

Heard the Ld. Advocate for the Appellants. He has moved the petition for admission of the Appeal.

Perused the case record and certified copy of the judgement and decree dtd. 24.05.2011 & 09.06.2011 passed by the Ld. Civil Judge (Jr. Div.), Ghatal, Paschim Medinipur in T.S Case No. 58 of 2008 along with certified copy of the impugned order. It appears that the appeal is filed within time and so the appeal is admitted.

Issue notice upon the Respondents. Requisite at once.

Call for LCR.

Fix α for SR and LCR.

Dictt and Corrt by me

D.J.

District Judge
Paschim Medinipur

Criminal Misc – 3107 of 2017

03, dtd 28.08.2017

The record is put up by a petition.

It appears from the filed petition that the P.S case No. in the bail petition was written as Kotwali PS case No. 935 of 2015 but it will be Kotwali PS case No. 953 of 2015.

Ld. Lawyer for the petitioner prays for necessary correction by filing a petition.

Heard both sides. Perused the LCR and the petition.

Considered.

The prayer for necessary correction of PS case No. is allowed.

Let the Kotwali PS case No. be read as 953 of 2015 in stead of Kotwali PS case No. 935 of 2015 in the bail order and also necessary correction be made in the bail petition.

Let a copy of this order be sent to Ld. Court below for information.

Dictt and Corrt by me

S.J.

Sessions Judge
Paschim Medinipur

Civil Revision 01 of 2017

Order No.....dt. 29.08.2017

Today is fixed for admission of the Civil Revision.

This petition is regulated u/s 115 A of the CPC (West Bengal Amendment).

It appears from the paper that one suit partition and a separate possession was finally decreed on 30.10.2003 and the decree holder filed a execution case being No. 01/2004. But before the disposal of the execution case, the decree holder transferred the suit property. After such transfer, the transferee did not file any petition to be impleaded in the execution. One of the decree holders died on 05.09.2016 after the transfer of the property. Thereafter, these Respondents had filed a petition under order 22 rule 10 and section 151 CPC praying for substitution in place of original decree holder as subsequent purchaser. The present petitioners oppose the prayer on different grounds including that the legal representative of the decree holder cannot get the decree executed unless he obtain a succession certificate. Ld. Court after discussion all the matters placed before him and referred kind observation of different Hon'ble High Courts allowed the prayer made in the petition under order 22 rule 10 of the C.P.C and simultaneously rejected the objection petition.

On being aggrieved at and dissatisfied with the said order being No. 110 dt. 07.04.2017 these petitioners have preferred this Civil Revision.

On the point of admission Ld. Lawyer for the petitioners submits that if this Revision is not accepted in the present form and prayer then these petitioners will be debarred from challenging that order in question.

In view of the amended position of section 115 of the CPC which is the guiding factor of section 115A of the C.P.C (West Bengal Amendment), this Court comes to a conclusion that the objection of these petitioners was accepted by the Ld. Trial Court and the order under challenge had been made in favour of the petitioners and that would not have finally disposed of the pending execution proceeding and for that reason and in view of the present position of law, this Court comes to a conclusion that this petition in the form of Civil Revision against the said order is not maintainable.

Hence, it is

ORDERED

that the Revision is not found admissible.

Hence, the petition is not admitted and disposed of accordingly.

Dictt and Corrt by me
S.J.

Sessions Judge
Paschim Medinipur

Civil Revision 74 of 2016

Order No...06, dt. 29.08.2017

This is a petition under order 14 of the Indian Limitation Act.

The petition arises from the following facts:-

On 16.09.2013 the Ld. Civil Judge, (Jr. Divn) Ghatal, Paschim Medinipur vide Order No. 21 in connection with T.S 115/2009 rejected the plaint of that case. Against the order the plaintiff lodged one Civil Revision before the Hon'ble High Court, Calcutta being CO No. 4271/2013. Hon'ble Justice on 08.04.2016 was of the opinion that the Civil Revision was not maintainable. Regular appeal should be passed against the order. In accordance with the said order this T.A has been filed on 23.08.2016.

Ld. Lawyer for the Appellant submits that he has got no laches on his part. It was bona fide mistake and for that reason the Revision was preferred.

Ld. Lawyer for the Other Side submits that the suit itself is frivolous one and everything is being done to harass the party.

Perused the materials on record. It appears that the Revision was pending before the Hon'ble High Court and due to that pendency of the appeal, the delay was caused. Accordingly, that delay may not be stated as delay in true sense as because that was pending before the legal forum.

Having regard to all these facts and circumstances, the delay is condoned with the cost of Rs. 400/- in favour of the Respondents.

To for admission hearing subject to the payment of cost.

Dictt and Corrt by me
D.J.

District Judge
Paschim Medinipur

Misc Appeal – 47 of 2017

02, dtd 29.08.2017

The Appellant files hazira. Today is fixed for admission of the appeal.

Heard the Ld. Advocate for the Appellant. He has moved the petition for admission of the Appeal.

Perused the case record and certified copy of the judgement dtd. 23.06.2017 passed by the Ld. Civil Judge (Jr. Div.), 1st Court, Paschim Medinipur in O.S Case No. 155 of 2017 along with certified copy of the impugned order. It appears that the appeal is filed within time and so the appeal is admitted.

Issue notice upon the Respondents. Requisite at once.

One petition under order 1 Rule 10 has been filed by Mr. Kotni George is kept with the record.

W/O, if any, in the mean time.

Call for LCR.

Fix for SR and LCR.

Dictt and Corrt by me

D.J.

District Judge
Paschim Medinipur

Misc Appeal – 29 of 2017

07, dtd 30.08.2017

Today is fixed for hearing of the stay petition. This Misc appeal has been preferred by Appellant Tarun Pramanik against the order passed by Ld. Civil Judge (Jr Divn) 1st Court, Paschim Medinipur in connection with J. Misc case No. 35/2011.

In the said proceeding one Swapan Pal was the opposite party as a representative of Manikyaram Chatuspati Trust Estate.

The said Swapan Pal has filed one caveat before this Court. Whenever this Misc appeal was filed a notice was issued upon him on 15.07.2017 informing him that 04.09.2017 was fixed for hearing. On 17.08.2017 this Appellant has filed one petition praying for stay of the operation of the order under challenge and thereafter, the case was fixed for hearing on 23.08.2017, thereafter, adjourned on 29.08.2017 and today the record is taken up for hearing.

Thus, the ultimate facts remain that this caveator has not been served with any notice about the hearing of the stay petition and in view of section 148A (3) CPC, the stay petition cannot be heard without serving notice upon the caveator.

In this circumstances, this Court is not in a position to hear this petition.

Fixing..... for hearing.

Serve notice upon the caveator.

Dictt and Corrt by me

D.J.

District Judge
Paschim Medinipur

ACT VIII – 08 of 2016

10, dtd 30.08.2017

Today is fixed for hearing of the petition under order 5 rule 20 of the CPC.

Ld. Lawyer for the petitioner submits that the Respondent No. 1 resides with jurisdiction of North 24 Parganas. But he is avoiding notice of this case sent through post. He has prayed for permission to serve summons upon him by way of publishing in daily newspaper. It also appears from the record that till no report as to the service of report has been received from the establishment of District Judge, Barasat.

In this circumstances, the hearing of the instant petition is kept pending for 30 days.

To 25.10.2017 for further hearing.

Dictt and Corrt by me

D.J.

District Judge
Paschim Medinipur

Misc Appeal – 55 of 2015

24, dtd 30.08.2017

The petition dt. 22.03.2017 filed by the Appellant under order 22 rule 4 of the CPC is taken up for hearing and order in present of both the parties.

It appears from the record that the Respondent No. 3 Sikha Kisku died on 23.12.2016 leaving behind one son and four daughters. All are major and they are only legal representative of the deceased.

In this circumstances, the Appellant has prayed for substitution of her those legal heirs in place of deceased- Respondent No. 3.

heard both sides.

Other side does not oppose.

The prayer for substitution is considered and allowed.

Let the name of the Respondent No. 3 be deleted from the cause title and the name of her five legal heirs be substituted as mentioned in the schedule of the petition dt. 22.03.2017.

The Appellant is hereby directed to file a amended Memo of Misc Appeal.

To for step.

The petition for time is not pressed.

Dictt and Corrt by me

D.J.

District Judge
Paschim Medinipur

Misc Appeal – 108 of 2010

20, dtd 30.08.2017

To is fixed for cross examination of PW-1 in connection with limitation petition.

Ld. Lawyer for the Appellants files a petition stating therein that the witness is ill and for that reason he has failed to attend the Court and prays for time.

Ld. Lawyer for the other side submits that the copy of that adjournment petition has not been served.

The time petition is not moved.

On repeated calls none found present.

Ld. Lawyer for the Respondent opposes the prayer for time.

It appears from the record that this Misc Appeal was filed on 23.11.2010 and the petition u/s 5 of the Limitation Act is found pending since that date.

In this circumstances, this Court thinks that no such time should be allowed against such none moved petition.

Hence, the prayer is considered and rejected.

Parties are directed to get ready at once.

Later

No fresh step is taken.

Ld. Lawyer for the Respondents is present.

None is found present on behalf of the Appellants.

Hence, the evidence on behalf of the Appellants is closed.

ToOPW, if any.

Dictt and Corrt by me

D.J.

District Judge
Paschim Medinipur

Other Appeal – 83 of 2013

25, dtd 30.08.2017

Today is fixed for hearing of the petition under order 6 rule 17 of the CPC along with show cause.

Ld. Lawyer for the Respondents is present whereas none is found present on behalf of the Appellants though one time petition is file.

None is found present to move the petition.

In this circumstances, this prayer for non-moved petition is considered and rejected.

Parties are directed to get ready at once.

Later:-

On repeated calls Ld. Lawyer for the Appellants or Appellants do not turn up.

Ld. Lawyer for the Respondents is present.

In this circumstances, the pending petition under order 6 rule 17 of the CPC dt. 21.02.2017 is considered and rejected for default.

ToLCR

Dictt and Corrt by me

D.J.

District Judge
Paschim Medinipur

J. Misc – 27 of 2009

Order No....., dtd 30.08.2017

Today is fixed for valuation report from the Collector, Paschim Medinipur.

It appears from the record that this case is pending at this stage for a long period.

Ld. Lawyer for the petitioner submits that in stead of waiting for the valuation report as stated by them, it may be accepted.

Before accepting that prayer, the Collector, Paschim Medinipur may be given a reminder for sending the report by the next date.

Let a copy of this order be sent to Ld. District Magistrate, Paschim Medinipur.

To for report and further order.

The petition on this point is kept pending till further order.

Dictt and Corrt by me

D.J.

District Judge
Paschim Medinipur

L. A. Misc Case 135 of 1965

Order No.....dt. 26.04.2017.

This petition dt. 18.06.2016 is taken up for hearing. The backdrop of this petition may be stated in the following manner. Some amount was deposited in Fixed-Deposit Scheme in the **T.D-A/44 248588 dt. 28.02.2004** with the State bank of India, Midnapore Branch. The accrued interest on the said deposited amount is usually paid to the Shebait of the deity through Nazir of this Court from the Bank to defray the daily expenses of Shebapuja. In the petition under consideration, it has been stated by the petitioner that they are entitled to get the accrued interest on and from 19.07.2007 to 19.02.2016. But the Bank has paid the minimum amount thereon without furnishing any particulars as to the total amount of interest accrued or any amount so accrued at the deposited with any Fixed Deposit Scheme and if that was so deposited what is the terms and condition of so fixed deposited.

In this circumstances, this Court finds it necessary to direct the concerned State Bank of India, Midnapore Branch to furnish updated account and details of the said account to this Court within three months. The concerned Bank is directed accordingly.

To for further order.

Dictt and Corrt by me
D.J.

District Judge
Paschim Medinipur

Act VIII- 14 of 2015

Order No. 13, dtd 08.01.2018

Today is fixed for evidence.

The petitioner files haziran.

The OP files another petition praying for time on the ground stated therein.

None appears to move the petition.

Copy not served.

The OP is directed to file show cause by the date fixed as to why the case shall not be heard exparte.

To for filing show cause.

Dictt and Corrt by me

D.J.

District Judge
Paschim Medinipur

Misc Appeal 33 of 2016

Order No. 17, dtd 28.05.2018

Today is fixed for hearing of the petition u/s 5 of the Limitation Act.

Ld. Lawyer for the Appellant by filing a petition submits that he is not willing to proceed with the appeal.

Heard. Considered.

The prayer is allowed.

As the Ld. Lawyer for Appellant is unwilling to proceed with the case, the case is accordingly, dismissed for non-prosecution.

Dictt and Corrt by me

D.J.

District Judge
Paschim Medinipur

Misc Appeal 46 of 2015

Order dt. 14.12.2018

The record is put up today suo moto on perusal of the same while scrutiny for the purpose of consignment in the District Record Room. It appears that an application for condonation of delay had not been disposed of before the appeal was disposed of on merit. Even the Ld. Counsels of the contesting parties did not mention the same before the commencement of hearing of the appeal on merit. The Court is not oblivious that in this situation, the apparent irregularity should not be allowed to be remedied in absence of the contesting parties.

Therefore, the contesting parties be informed at once to give them an opportunity to be heard for passing appropriate order.

Inform at once.

Tofor passing order.

Dictt and Corrt by me

D.J.

District Judge
Paschim Medinipur