

October 29, 2024
ARDR/tkm (15)

CO 3815 of 20244

Shyamal Kanti Bagchi
Vs.
Mrinmoy Bagchi & anr.

Adv. Asis Bhattacharyya,
Adv. Biswajit Mitra,

...for the petitioner.

Affidavit of service filed on behalf of the petitioner is taken on record.

This revisional application is filed under Article 227 of the Constitution of India challenging the order No.40 dated 31/8/2024 passed in Misc. case no.8 of 2023 arising out of Title Execution case no. 4 of 2022. By passing the impugned order, the learned Executing Court dismissed the application filed on behalf of the petitioner under Section XLVII of the Code of Civil Procedure.

Being aggrieved by and dissatisfied with the said impugned order the present revisional application is filed at the behest of the petitioner.

It is submitted by the learned counsel appearing on behalf of the petitioner that the order of stay may be granted in respect of the impugned order passed by the learned Executing Court dated 31/8/2024.

It appears that a suit was instituted by the plaintiff/decreed holder against the defendants with a prayer for declaration and permanent injunction in respect of the case property. The said suit was decreed by the learned trial Court and thereafter the decree was

put into execution. In the meantime, the present petitioner/defendants filed an application under Section XLVII of the Code of Civil Procedure which was turned down by the learned Executing Court. Against the said order dated 31/8/2024, this revisional application is preferred on behalf of the petitioner.

It is stated by the learned counsel appearing on behalf of the petitioner that there are sufficient grounds in this case for which his application under Section XLVII of the Code of Civil Procedure may be allowed. It is further contended by the learned counsel appearing on behalf of the petitioner that the decree for declaration and permanent injunction cannot be put into execution and as such, the execution case is not maintainable. As per submission made on behalf of the petitioner that the learned trial Court committed an error in passing the impugned order.

Although, I find that despite service, none appears on behalf of the respondent today to contest this application, but in my opinion another opportunity may be given to the respondent to contest this case.

Accordingly, the petitioner is directed to serve notice upon the respondent within one week from date and file affidavit of service on the returnable date.

List the matter before the regular Bench after the Puja vacation.

(Prasenjit Biswas, J.)