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(2010) 10 CAL CK 0074

Calcutta High Court

Case No: C.O. No. 2929 of 2010

Latika Sinha APPELLANT

Vs

Anju Poddar RESPONDENT

Date of Decision: Oct. 4, 2010

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 21 Rule 97, 47

Citation: (2010) 10 CAL CK 0074

Hon'ble Judges: Prasenjit Mandal, J

Bench: Single Bench

Advocate: Ashok Bhattacharya and Swapan Kumar Pal, for the Appellant;Souradipta Banerjee, for the Respondent

Judgement

Prasenjit Mandal, J.
This application is at the instance of the judgment debtor and is directed against the order No. 60 dated August 7, 2010 passed by the learned Judge, Fifth Bench, Small Causes Court, Calcutta in Misc. Case No. 109 of 2009 arising out of an Ejectment Case No. 204 of 2007.

2. The short fact, necessary for the purpose of disposal of this application, is that the decree holder/opposite party instituted a Title Suit No. 163 of 2001 before the learned Judge, Third Bench, Small Causes Court, Calcutta. That suit was decreed in favour of the plaintiff. The judgment debtor/petitioner herein/O.P. No. 2 preferred an appeal being Title Appeal No. 125 of 2007 before the learned Judge, City Civil Court, Calcutta and that appeal was dismissed. Thereafter, the decree holder filed the Title Execution Case No. 204 of 2007 for execution of the decree for recovery of possession. In that execution application, he also filed an application under Order 21 Rule 97 of the C.P.C. being numbered Misc. Case No. 109 of 2009 praying for police help. This misc. case is now pending for further cross-examination of the Court bailiff. The judgment debtor filed an application u/s 47 of the C.P.C. being numbered as Misc. Case No. 22 of 2010. That

misc. case was fixed for hearing before the learned Chief Judge, Small Causes Court, Calcutta.

3. The fact remained that the learned Chief Judge, Small Causes Court, Calcutta heard the appeal being the Title Appeal No. 125 of 2007. Under the circumstances, the learned Chief Judge transferred the misc. case No. 22 of 2010 before the learned Judge, Fifth Bench, Small Causes Court, Calcutta for disposal.

4. That misc. case No. 22 of 2010 was disposed of by the learned Judge, Fifth Bench, Small Causes Court, Calcutta. Thereafter, he was proceeding with the title execution case as well as the other misc. case No. 109 of 2009 under Order 21 Rule 97 of the C.P.C. At that stage, the judgment debtor has come up with this application.

5. While the learned Advocate for the petitioner was making submission pointing out the entire matter of the case, Mr. Banerjee appearing on behalf of the opposite party has fairly submitted that the he has no objection if the execution case and the other misc. case being Misc. Case No. 109 of 2009 is taken up by the learned present Chief Judge, Small Causes Court, Calcutta. He further submits that specific direction should be given upon the learned Chief Judge, Small Causes Court, Calcutta for disposal of the said misc. case within a certain period and thereafter to proceed with the execution case in accordance with law.

6. Mr. Bhattacharya, learned Advocate appearing on behalf of the petitioner, submits that at present there is a regular learned Chief Judge of the Small Causes Court, Calcutta and so if necessary directions are given for disposal of the misc. case, he has no objection.

7. This being the position, I am of the view that the present application should be disposed of giving necessary directions upon the learned Chief Judge, Small Causes Court, Calcutta for early disposal of the misc. case No. 109 of 2009. Accordingly, this application is disposed of with the following observations:

1. That the learned Judge, Fifth Bench, Small Causes Court, Calcutta shall not proceed with the misc. case No. 109 of 2009 arising out of the execution case No. 204 of 2007. The learned Judge, Fifth Bench, Small Causes Court, Calcutta shall immediately transfer the said misc. case along with the execution case to the learned Chief Judge forthwith.

2. That the learned Chief Judge, Small Causes Court, Calcutta shall dispose of the misc. case No. 109 of 2009 positively before the end of the year, 2010.

3. That thereafter he shall proceed with the execution case and dispose of the same in accordance with law as early as possible.

4. That if the regular learned Chief Judge is not available, the learned Chief Judge-in-charge shall take up the matter as per above observation, and

5. That there shall be no order as to costs.

8. Urgent xerox certified copy of this order, if applied for, be supplied to the learned Advocates for the parties on their usual undertaking.