
(2011) 08 CAL CK 0047
In the Calcutta High Court
Case No : C.O. No. 4048 of 2010

Begum Minu Malik

APPELLANT

Vs

Md. Nijamuddin and Others

RESPONDENT

Date of Decision : 29-08-2011

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 47

Citation : (2011) 08 CAL CK 0047

Hon'ble Judges : Prasenjit Mandal, J

Bench : Single Bench

Advocate : Sabyasachi Bhattacharyya and S.T. Meena, for the Appellant;
Shabana Parveen, Jiban Ratan Chatterjee and P.P. Roy, for the Respondent

Final Decision : Dismissed

Judgement

Prasenjit Mandal, J.—This application is directed against the order dated February 20, 2010 passed by the learned Civil Judge (Senior Division), Malda in Misc. Case No. 57 of 2008 arising out of the O.C. Execution Case No. 15 of 2006.

2. The short fact is that the Plaintiff/decreed-holder/opposite party herein filed an application for execution of a decree for specific performance of contract of the premises in suit as described in the schedule of the plaint and the Petitioner is contesting the said execution proceeding. He filed an application u/s 47 of the CPC contending, inter alia, that a judgment debtor/opposite party of the application is one of the Directors of the Defendant company and there are other two Directors. Those two directors have not been made party to the suit. Moreover, there was No. resolution in the general meeting as to sale of the suit premises. Moreover, proper stamp duty has not been paid over the valuation of the suit property and as such, the decree is not valid. That application was converted into the Misc. Case No. 57 of 2008 and by the impugned order, the learned Trial Judge has dismissed the said misc. case. Being aggrieved, this application has been preferred.

3. Now, the question is whether the impugned order should be sustained.
4. Upon hearing both the sides and on perusal of the materials on record, I find that the said title suit being O.C. No. 109 of 1993 was decreed on contest and one of the Directors contested the said suit on behalf of the Defendant company. The decree attained finality. The execution case has also been disposed of on full satisfaction, when the sale deed was executed through court.
5. The grounds which have not been taken by the Petitioner, should have been taken in the suit and since those grounds should have been the grounds of defense at the time of trial of the suit, I think, those grounds are not available in the proceeding for execution of the decree. In dealing with the execution of a decree, the court is to look into the matter of execution, discharge and satisfaction of the decree and the contentions raised by the Petitioner do not fall in either of the grounds.
6. Mr. Sabyasachi Bhattacharyya appearing on behalf of the Petitioner has referred to the decision of State of U.P. and Another Vs. Mahendra Tripathi, and submits that in spite of disposal of the application for execution of the decree on full satisfaction, an application u/s 47 could even be raised for decision and so, the present application is entertain able. In the instant case, the stand taken by the petitioner does not fall under the clause "relating to execution, discharge or satisfaction of the decree". Therefore, I am of the view that this decision is not applicable in the instant situation.
7. I am, therefore, of the view that the learned Trial Judge has rightly rejected the application u/s 47 of the CPC There is No. ground of interference with the impugned order. Accordingly, this application is devoid of merits.
8. It is, therefore, dismissed.
9. Considering the circumstances, there will be no order as to costs.
10. Urgent Xerox certified copy of this order, if applied for, is supplied to the learned Advocates for the parties on their usual undertaking.