
(1986) 08 CAL CK 0002
In the Calcutta High Court
Case No : F.M.A.T. No. 2249 of 1986

C.R. Basu

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision : 12-08-1986

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 115
Constitution of India, 1950 — Article 226

Citation : 91 CWN 319

Hon'ble Judges : P.K. Mukherjee, J;G.N. Ray, J

Bench : Division Bench

Advocate : C.R. Basu, for the Appellant; A.N. Banerjee and Banani Mukherjee for the State and Saktinath Mukherjee and Bhaskar Ghosh for Proforma, for the Respondent

Final Decision : Dismissed

Judgement

G.N. Ray, J.—It appears that against a decree for eviction passed in Ejectment Suit No. 701 of 1974, the judgment-debtor preferred an appeal before this court and the said decree for eviction was upheld by this court on appeal. Thereafter, the judgment-debtor moved the Supreme Court of India but the said SLP before the Supreme Court was also dismissed and the Supreme Court was also dismissed and the Supreme Court ordered the judgment-debtor to vacate the suit premises on or before March 31, 1986 on an undertaking given by the judgment-debtor to the Supreme Court. Thereafter the decree was put into execution and the judgment-debtor raised objections, but the objections were overruled by the executing court. Then the judgment-debtor moved an application in revision u/s 115 of the CPC before this court but such revisional application has also been dismissed by this court. The judgment debtor has not challenged the correctness of the decision of this court in dismissing revisional application u/s 115 C. P. Code by moving the Supreme Court but has attempted to challenge the correctness of the said decision made by this court in the revisional jurisdiction by moving a writ petition under Article 226 of the

Constitution of India on the ground that in disposing of the revisional application the learned Judge did not touch the point of executability and maintainability of the execution case. The said writ application has been rejected by the learned trial judge on the finding that the question of execution of the decree between the parties is not the subject matter of this court in the writ jurisdiction. Hence this instant appeal has been preferred and in the present application prayer for stay of all proceedings of ejectment execution case No. 20 of 1985 has been made. In our view, the petitioner had ample alternative remedy to agitate against the non-executability of the decree and/or the propriety of the decision of the executing court in rejecting the objection petition. The petitioner, as a matter of fact, had availed such alternative remedy by moving revisional jurisdiction of this court u/s 115 of the Code of Civil Procedure, but having failed there, the petitioner has attempted to challenge such decision by moving a writ petition on the footing that the learned Judge has not touched the point of executability and maintainability of the execution case.

In, our view, in such circumstances a writ petition is not maintainable and the learned trial Judge was justified in dismissing the said writ petition. When this court in the exercise of revisional jurisdiction has dismissed the revisional application u/s 115 of the CPC such order of this court cannot be questioned before this court in another jurisdiction.

2. Moreover when relief can be obtained in the ordinary course of a civil litigation, assumption of jurisdiction in a writ proceeding for issuing a writ of certiorari is not called for and on the score of expediency such writ petition should not be entertained. The appeal is treated as on day's list and both the appeal and the application are dismissed.

There will be no order as to costs.