

29.02.2024
Sl. No.7(DL)
srm

C.O. No. 581 of 2022

Tapas Kumar Acharyaya & Anr.

Versus

Debananda Acharyaya

**Mr. Pratip Kumar Chatterjee,
Mr. Chittapriya Ghosh**

...for the Petitioners.

**Mr. Partha Pratim Roy,
Mr. Anirban Das**

...for the Opposite Party.

1. The revisional application arises out of an order dated January 12, 2022 passed by the learned Civil Judge (Junior Division), 2nd Court at Kandi, District-Murshidabad, in connection with Misc. Case No.LR-65 of 2019 (CIS 65 of 2019).
2. By the order impugned, the learned court rejected the point of maintainability raised by the petitioners on the ground that the pre-emptor had filed the pre-emption case in respect of Plot No.2991 and the sale consideration was Rs.4,62,000/- The pre-emptor had deposited Rs.2,75,000/- and Rs.2,77,200/- before the period of limitation had expired. Rs.2,75,000/- was deposited on November 4, 2019 with the application

for pre-emption and Rs.2,77,200/- was deposited on December 9, 2019.

3. The pre-emption has been claimed on the ground of the pre-emptor being a non-notified co-sharer. The period of limitation for filing a pre-emption application in this case, is one year. Under such circumstances, the period of limitation as per the pleadings would expire on June 2, 2020. Whereas, the entire consideration money along with statutory interest was already deposited within December 9, 2019.

4. Mr. Ghosh, learned Advocate appearing on behalf of the petitioners submits that the decision in Abdul Matin Mallick vs. Subrata Bhattacharjee (Banerjee) reported in AIR 2022 SC 2175 clearly lays down the law that the application had to be accompanied with the consideration money and 10% statutory interest or else the said application would not be maintainable in the eye of law.

5. Mr. Roy, learned Advocate appearing on behalf of the opposite party/pre-emptor submits that the right of pre-emption would trigger off only when the sale consideration is deposited along with the statutory

interest as per the decision of Barasat Eye Hospital & Ors. vs. Kaustabh Mondal reported in (2019) 19 SCC 767. When the consideration money was deposited within the period of limitation, the question of dismissal of the said pre-emption application would not arise and the proceedings would be maintainable. The right of pre-emption was triggered off on the date the balance consideration was paid.

6. Having considered the rival contentions, this Court finds that in Barasat Eye Hospital (*supra*), the Hon'ble Apex Court held that once the time period to exercise a right was sacrosanct, then the deposit of the full amount within the time was also sacrosanct. The two went hand-in-hand. It would be a different case altogether, if the application was filed within time and the amount deficient was also deposited within time meant for exercise of the right. In such an eventuality, the right of pre-emption would be triggered off on deposit of the deficit amount. This was an observation in the decision.

7. In my opinion, whether deposit in two instalments but within the period of limitation would be valid in

law, i.e. deposited within one year from the date of sale, shall be decided as an issue in the suit on trial.

8. Thus, the maintainability of the pre-emption application and the above issue by applying paragraph 35 of the Barasat Eye Hospital (*supra*) and the ratio of Abdul Matin Mallick (*supra*) shall be decided in the proceedings as the main issues before other issues are decided. The other issues will be decided in the matter on the outcome of such issues.

9. Accordingly, the revisional application is disposed of.

10. There shall be no order as to costs.

11. Parties are to act on the basis of the server copy of this order.

(Shampa Sarkar, J.)