

19.02.2021
Court No. 19
Item No.60
CP

C.O. 3589 of 2017
with
CAN 3 of 2020

M/s. Dutta Lahiri and Company
vs.
Smt. Ratna Sur

Mr. Kushal Chatterjee

.....for the petitioner.

Despite service none appears on behalf of the
opposite party.

Affidavit of service filed today is taken on
record.

CAN 3 of 2020 is an application for
appointment of a new Special Officer in respect of
Premises No. P-51/2. C.I.T. Road, Police Station
Entally, Kolkata – 700014. CAN 3 of 2020 has been
filed in a disposed of revisional application, CO No.
3589 of 2017. The civil revisional application was
filed challenging an order of refusal to grant a ad-
interim mandatory injunction in a proceeding under
Section 6 of the Specific Relief Act, 1963 passed by
the learned Civil Judge (Senior Division), Sealdah.
Initially, aggrieved by the said order the
petitioner/plaintiff had filed a first miscellaneous
appeal before this court. The said appeal was
registered as FMAT 690 of 2016. The first

miscellaneous appeal was entertained by this court and a Special Officer (since deceased), namely, Mr. Asish Kumar Roy, learned advocate of this court, was appointed. The learned Special Officer acted on the basis of the order and filed certain interim reports.

By an order dated November 1, 2017 a Division Bench of this court converted the appeal being FMAT 690 of 2016 to a revision and consequently C.O. 3589 of 2017 was registered.

The civil revisional application was finally heard on contest and disposed of without interference with the order impugned therein, with a direction upon the learned Trial Judge to dispose of the mandatory injunction application along with the suit within a period of four months from the date of communication of the order, i.e. August 24, 2018.

It is informed that the suit is pending and is at the stage of evidence. The learned Special Officer expired.

The learned coordinate bench also observed that the keys to the suit premises would remain with the learned Special Officer already appointed by this court subject to any direction, which would be passed on the learned Special Officer in that regard at the time of final disposal of the suit by the court below.

As my predecessor Judge has already empowered the learned court below, to pass certain directions upon the Special Officer, in my view, the learned court below is also empowered to pass such orders for appointment of a Special Officer if the learned court deems fit and proper.

This order is being passed in the absence of the opposite party as despite service the opposite party has not appeared. Moreover, the order is not to the prejudice of any party as the learned court below has already been empowered to pass certain directions upon the Special Officer before whom the suit is pending.

As the revisional application has already been disposed of by empowering the learned trial court to pass any direction upon the Special Officer from time to time as may be necessary in the suit, this court is of the opinion that the suit court who is now in complete seisin of the matter will have the power to also appoint a Special Officer on such terms and conditions as the learned court deems fit and proper. As no proceeding is pending before this court, it would be proper that the learned Trial court to pass necessary orders in this regard. The petitioner shall be at liberty to file an appropriate application in the court below in terms of this order upon service of a

copy upon the opposite parties. If such application is filed, the same shall be disposed of accordingly.

The application CAN 3 of 2020 is disposed of.

(Shampa Sarkar, J.)