

15.02.2021

Court No. 02
Item No. DL – 7 & 8 & 9
nandy

(ORDER PASSED)

SA 9 of 2020
with
CPAN 558 of 2020
with
CPAN 603 of 2020

Jaba Bhattacharya
Vs.
Dipankar Sen

Mr. Kaushik Dey, Advocate
Ms. Shraboni Sarkar, Advocate

.....for the Appellants

Mr. Tarak Nath Halder, Advocate
Mr. Sagnik Chatterjee, Advocate

.....for the Respondents

These contempt applications are at the behest of the parties to the proceedings making allegations and counter-allegations against each other pertaining to violation of the directions and orders passed by this Court on August 5, 2019. While dismissing the appeal at the stage of admission, as it do not involve any substantial questions of law, we permitted the appellants to vacate the decreetal premises by February 5, 2020 subject to an undertaking to be filed on/or before August 13, 2019 and payment of occupation charges for such interregnum period. Subsequently, the period for vacating the premises was extended on March 3, 2020 till August 4, 2020. But the reality, which has been projected today, is that the respondent/decreet-holder has not received the vacant and khas possession of the decreetal premises from the appellant within the extended period.

A plea is sought to be taken under an order dated August 7, 2020 passed by the Special Bench in WP 5323 (W) of 2020 that all the interim orders and the deposit of occupational charges/rent was extended till November 30, 2020 which was further extended and is still operative.

We have seen the order passed by the Special Bench and we do not think that the said order covers the undertaking given by the litigant himself to vacate the premises on/or before the specified date. A litigant has undertook before the Court by filing an affidavit that she would vacate the premises on/or before a particular date and it is expected from the said litigant that she would honour her promise/commitment shown to the Court. Because of the ripe age of the litigant, the initial period was extended giving virtually double the period which was initially given to her, yet there is a reluctance and apathy shown to honour and fulfil such promise/commitment.

The Court cannot be a mute spectator nor should be swayed by sentiments or emotions. The law is uniform and equal to all citizen to the country and at the behest or instance of one it should not be permitted to impinge on the lawful right accrued to the other. We will consider the allegations made in the aforesaid contempt applications on the next date but we feel that it is high time that the undertaking which was given, must be duly complied with and such recalcitrant litigant should not be allowed to reap the benefit of her own wrong, swaying the mind of the Judges on emotional quotient.

We thus appoint Mr. Supratim Dhar, learned lawyer, as Special Officer, to recover the possession of the decreetal premises from the appellant and shall keep the same with him until further order is passed this regard.

Mr. Dhar submits to the Court that he has difficulty on the next two weekends because of his prior commitments and, therefore, we direct Mr. Dhar to visit the decreetal premises on March 6, 2021 at 12.00 noon and recover the possession therefrom.

The Officer-in-charge of the Ballygunge Police Station is directed to render cooperation, assistance and help to the Special Officer in executing and/or implementing the order passed by this Court. The concerned Officer-in-charge shall also provide adequate police personnel, both male and female, as and when requested by the Special Officer and shall take all decisions on the spot depending upon the eventualities and happenings of events.

The respondent shall provide an Ambulance, in the event the appellant, who according to the learned Advocate representing her is a septuagenarian, needs to be admitted in a nearby hospital. The hospital expenditure shall be borne by the daughter or the son of the appellant, as the case may be. The respondent shall not demand the expenditure incurred for hiring the Ambulance, if any.

Let this matter be listed on **March 8, 2021** to be taken at **12.45 p.m..**

The initial remuneration of the Special Officer is fixed at 1000 G.M.s., to be paid by the respondent. Since the date has been fixed by us in presence of the respective counsel, the Special Officer is not required to serve separate notice to the respective parties or their counsels.

(Harish Tandon, J.)

(Abhijit Gangopadhyay, J.)

