

Item No.47

IA No.GA/3/2021
With
CS 288/2007
In APD 331/2017

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
ORIGINAL SIDE

SARAF AGENCIES PVT. LTD.
VERSUS
KANORIA JUTE & INDUSTRIES LIMITED

BEFORE :

THE HON'BLE JUSTICE I.P. MUKERJI
And
THE HON'BLE JUSTICE ANIRUDDHA ROY

Date : 21st June, 2021

Appearance:-

Mr. Aniruddha Mitra, Adv.
Mr. Subhajit Ghosh, Adv.
... for Petitioner

The Court : As the point involved is very short, we propose to dispose of this application, dispensing with all formalities.

We do not think that the absence of the respondent will in any way affect them.

By its order dated 26th August, 2019, a Division Bench of this Court, disposing of an appeal arising out of an eviction decree with consequential reliefs, appointed a Special Referee to determine the mesne profits in respect of the suit property being Premises No.4/1, Red Cross Place, Kolkata-700001.

By her report dated 29th November, 2019 the Special Referee made such determination.

The appellant Saraf Agencies Pvt. Ltd. challenged the report before us.

We find from the judgement and order of the Division Bench dated 26th August, 2019 that the Court directed this report to be presented before the learned trial Court “for an appropriate decree or order to be obtained thereon”.

We find on scrutiny of the said judgement and order dated 26th August, 2019 that the appellant/plaintiff was dissatisfied with non consideration of mesne profit by the learned trial judge. The Appeal Court directed its determination. After such determination the matter was to go back to the learned trial Judge for passing a final decree or any other order.

In those circumstances, it is fit and proper that any alleged error in the determination of mesne profit is adjudicated by the Court below and on the basis of its finding a decree passed or further orders made for reassessment of mesne profits.

This application is disposed of after condonation of delay in making the same by granting liberty to the applicant to file the self-same application before the learned trial Judge.

All questions left open by the Division Bench are to be considered by the learned trial Judge is kept open when this application is presented afresh before the Court.

(I.P. MUKERJI, J.)

(ANIRUDDHA ROY, J.)