

29.09.2021

court no. : 09
Item no. : PB-12
matter : FAT
status : STAYED
transcriber : nandy

FAT 88 of 2020

with

CAN 2 of 2020

Union of India & Anr.

Vs.

Majidur Rahaman & Anr.

Mr. Deepak Kumar Singh, Advocate

.....for the Appellant

Re: CAN 2 of 2021 (Stay)

This is an application for stay of operation of the impugned judgment and order dated April 18, 2008 passed in L.A. Case No. 88 of 2003 by the learned Additional District Judge, Second Court, Balurghat, Dakshin Dinajpur.

After acquisition of the property by the appellant the Collector made and published an award and the awarded sum has been deposited with the concerned Court. It is contended in the instant application that the said awarded sum was accepted by the respondent but the reference case under Section 18 of the Land Acquisition Act, 1894 was initiated, which is *par se* illegal.

We are not concerned with the legality of the said reference case at this stage as the same point can be agitated and required to be decided at the time of final hearing of an appeal. We are concerned with the order as prayed for.

There is no ambiguity that the award passed by the L.A. Court is akin to the money decree and in view of the provisions contained under Order XLI Rules 5 and 6 of the Code of Civil Procedure, a blanket order of stay should not be granted but must be subscribed with condition.

We, therefore, direct the appellant to deposit the amount awarded by the L.A. Court in the impugned judgment with the Registrar General of this Court within six weeks from date.

In the event, such deposit is made within the time indicated above, the Registrar General shall invest the same in a short term fixed deposit with any nationalized bank and shall continue to renew the same from time to time or until further order, that may be passed in the instant appeal.

There shall be unconditional stay of all further proceedings of the impugned judgment and order dated April 18, 2008 passed in L.A. Case No. 88 of 2003 by the learned Additional District Judge, Second Court, Balurghat, Dakshin Dinajpur, for a period of 6 weeks from date.

However, if the deposit is made within the time stipulated, the order of stay shall continue till the disposal of the instant appeal.

In default of the compliance as aforesaid, the order of stay shall stand automatically vacated without any further reference or the order to be passed in the instant appeal.

The application for stay being **CAN 2 of 2021** is, accordingly, **disposed of**.

Re: FAT 88 of 2020

Let the Lower Court Record be called for through the Special Messenger at the cost of the appellant. Such costs shall be put in on or before October 8, 2021. Upon deposit

of the Special Messenger Costs, Office shall immediately take steps to bring the same and after examination, if it is found complete, shall issue a notice under Rule 12 Chapter IX of the Appellate Side Rules upon the Advocate-on-record of the appellant.

The appellant shall prepare eight copies of informal paper books – printed, typewritten or cyclostyled, as the case may – out of Court within four weeks from date of notice of arrival of LCR. All other formalities including the filing of appellant's declaration relating to preparation of Paper Books are dispensed with.

In addition to the same, the appellant shall also file the requisites/Talabana and written-up notices form for effecting service upon the respondent on or before October 8, 2021. Office is directed to effect service of notice upon the respondents and shall include the effect of service as and when received in the department.

Upon filing of the Paper Books and on completion of service upon the respondents, liberty is granted to the parties to pray for early listing of the matter.

(Harish Tandon, J)

(Bibek Chaudhuri, J.)

