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RP Ct.04

FMA 1193 of 2019
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IA No.CAN 1 of 2019 (Old No. CAN 4947 of 2019)
+
CPAN 1476 of 2019
Sky Height Enclave Private Limited & Ors.
Versus
Jagabandhu Nandy & Ors.

Mr. Debabarata Saha Roy
Mr. Rajdeep Bhattacharya
.... For appellants/applicants

In Re : CPAN 1476 of 2019

This contempt application has been listed before us since allegation of contempt is in respect of order dated 25th September, 2019, passed by a Bench in which one of us was party (Suvra Ghosh J.).

Mr. Saha Roy, learned advocate appears on behalf of applicants who are appellants. He files supplementary affidavit on leave granted. He submits, there has been willful and deliberate violation of directions in said order. He relies on following passages in said order, according to him, being the directions.

“The exact locations of the temporary spaces to be provided by the appellants to the plaintiff nos.1 to 5 have been indicated in an affidavit of Chetan Singh affirmed on September 23, 2019 and filed on behalf of the appellants. Annexure-“A” to such affidavit is a sketch map of the ground floor-plan of the rear portion of the building under construction and the exact

location and areas to be temporarily allocated to the five plaintiffs.

.....

 ...

It is in such spirit that the remaining plaintiffs have accepted the suggestion as to temporary relocation with effect from November 1, 2019 and for a period of no more than 18 months thereafter.”

We have perused said order dated 25th September, 2019. The passages extracted above can at best be looked at as agreed terms. We take it that respondents are in breach. Breach of terms does not amount to contempt.

The supplementary affidavit discloses order dated 24th February, 2020. We find, by said order Supreme Court recorded statements made on behalf of applicants (herein) and disposed of the suit itself. We reproduce the last two sentences in the order.

“In case of any default on the part of the respondents, the petitioners will be at liberty to approach this Court.

Pending application(s), if any, shall stand disposed of.”

Mr. Saha Roy submits, since respondents did not vacate their occupations, to shift to the temporary accommodation, his clients filed contempt petitions in Supreme Court. The petitions were dealt with by order dated 29th January, 2021, wherein was said as follows:-

“We see no reason to exercise our jurisdiction in contempt. These contempt petitions are closed.”

He submits, as such his clients have been rendered remediless.

The suit stands disposed of by said order dated 24th February, 2020, by the Supreme Court in dealing with Special Leave Petitions against said order dated 25th September, 2019. As aforesaid, we do not find there can be cognizance of contempt, even on allegations made. It is for applicants to consider their next course of action, whether it will be in execution.

In view of above, CPAN 1476 of 2019 is dismissed.

(Arindam Sinha, J.)

(Suvra Ghosh, J)