

IN THE HIGH COURT AT CALCUTTA

CIVIL APPELLATE JURISDICTION

(Appellate Side)

MAT 863 of 2021

With

IA CAN 1 2021

(Through Video Conference)

Reserved on: 10.11.2021

Pronounced on: 16.11.2021

Dinesh Agarwal

...Appellant

-Vs-

State of West Bengal & Ors.

...Respondents

Present:-

Mr. Dinesh Agarwal,
... Appellant in-person.

Mr. Suvadip Bhattacharjee,
Mr. Balaram Patra, Advocates
... for the respondent nos. 7 and 8

Mr. Amitesh Banerjee,
Mr. Tarak Kanan, Advocates
... for the State.

**Coram: THE HON'BLE JUSTICE PRAKASH SHRIVASTAVA,
CHIEF JUSTICE**

**THE HON'BLE JUSTICE RAJARSHI BHARADWAJ,
JUDGE**

Prakash Shrivastava, CJ:

1. By this appeal correctness of the order of the learned Single Judge dated 14.07.2021 passed in WPA No. 10858 of 2020 has been

questioned by the writ petitioner. The learned Single Judge has found that the dispute raised by the appellant is of civil nature and a factual dispute.

2. Submission of the appellant in person is that the police is not justified in saying that it is civil dispute and that the police has wrongly handed over the possession of the premises and goods kept therein to the private respondent. Opposing the prayer learned Counsel for the respondent has submitted that the entire story which the appellant has tried to set up is based upon the factual controversy for which he is required to approach the appropriate forum and establish it by way of evidence. He submits that the police authorities have rescued the persons who were forcibly locked inside the premises.

3. Having heard the learned Counsel for the parties and perusal of the records, it is noticed that the appellant had come to the writ court with the plea that the premises in question was mortgaged in which he had started his business and was forcibly dispossessed therefrom. Following was the prayer made in the writ petition.

“a) A writ in the nature of Mandamus by directing the respondents, their agents, servants mainly the Respondent No. 1 and 2 to conduct an enquiry and suspend the respondent no. 5 and start departmental proceedings against the concerned officer, that is respondent nos. 3, 4 and 6.

b) A writ in the nature of Mandamus directing the Respondent Nos. 1 and 2 to handover and restore the possession of the mortgaged property to the mortgagee;

c) A writ in the nature of mandamus directing the respondent nos. 1 and 2 for make necessary arrangements to do a fruitful investigation and taken necessary action in connection to Bidhannagar (South) Police Station case no.

107 dated 25-8-2020 under section 341/323/406/506 of the Indian Penal Code, 1860.

d) Rule N.I.S.I. in terms of prayer (a), (b) and (c) above and make the rule absolute.

e) Pass such other or orders as Your Lordship may deem fit and proper.”

4. The official respondents had denied the plea of forcibly dispossession by filing an affidavit in opposition and disclosing that 4 women including 2 senior citizens were locked in the premises in question and on receiving an intimation they were rescued.

5. In the light of the aforesaid, learned Single Judge has duly considered each of the prayers made by the appellant and has reach to the conclusion that considering the affidavit of the official respondents conclusion cannot be drawn that the police personnel were guilty of latches and breaches as complained of by the petitioner. In respect of the issue of mortgaged property and restoration of possession, it has been found that the dispute is of civil nature between the private parties. Hence, liberty has been granted to approach the appropriate forum in accordance with law. In respect of the police case a direction has been issued to conclude the investigation and submit a report before the jurisdictional Court within a time bound period.

6. The perusal of the order passed by the learned Single Judge reveals that the issues raised by the appellant have been duly considered and appropriate conclusions have been drawn. In this view of the matter, we do not find any informity or illegality in the order of the learned Single Judge. Hence, no case is made out to interfere in

the order of the learned Single Judge. The appeal is found to be devoid of any merit which is accordingly dismissed.

(PRAKASH SHRIVASTAVA)
CHIEF JUSTICE

(RAJARSHI BHARADWAJ)
JUDGE

Kolkata
16.11.2021

PA(SS)