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19.07.2021
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**In the High Court at Calcutta
Civil Revisional Jurisdiction
Appellate Side**

C.O. No. 2868 of 2018

**Jagannath Sarkar
Vs.
Debabrata Goswami**

(Via video conference)

Mr. M.M. Verma,
Ms. Punam Verma
...for the petitioner
Mr. Tanmoy Mukherjee,
Mr. Manoranjan Jana
...for the opposite party

The present challenge is directed against an order passed by the executing court appointing an engineer commissioner on the application of the opposite party in connection with an execution case filed by the opposite party.

The nature of the decree-in-question was that of a compromise decree of partition, in which a final report was already filed by the partition commissioner and accepted by court.

The petitioner has also taken out an execution case. There are allegations and counter-allegations in each of the execution cases as to the respective opposite parties therein not complying with the partition decree.

Learned counsel appearing for the petitioner contends that, after appointment of the partition commissioner and passing of a final decree of compromise, there is no scope for appointing a further engineer commissioner merely to resolve disputes between the parties.

Learned counsel appearing for the opposite party contends that the scope of appointment is very limited, but the executing court is not at all powerless, in view of Rule 11(2) and Rule 32(5) of Order XXI of the Code of Civil Procedure. By placing specific reliance on Clause (j) of Sub-rule (2) of Rule 11, in particular, sub clause (iv) thereof, learned counsel for the opposite party argues that the court has power to appoint a receiver. Since the present decree also encompasses certain positive mandatory directions, the principle laid down in Order XXI Rule 32(5) of the Code in respect of injunction decrees is also applicable, it is argued.

Upon perusing the contents of the application and the impugned order passed, it appears that appointment of a special officer was necessary in view of respective contentions of the parties for smooth satisfaction of the compromise decree. There are various components of the

compromise decree and it would be better if an Engineer Commissioner is to be appointed for the purpose of effecting the partition decree, passed on compromise. As such, although the reasons given in the impugned order were a bit inadequate, the conclusion reached by the court below was correct in law.

However, it is made clear that the Engineer Commissioner appointed by Order No. 13, dated June 12, 2018, in Title Execution Case No. 29 of 2017, shall merely supervise the execution of the partition decree passed on compromise by each of the parties thereto, by following the said decree to the letter and ensure that no deviation from the decree takes place at the behest of either of the parties.

C.O. No.2868 of 2018 is, thus, disposed of in the light of the above observations.

There will be no order as to costs.

Urgent photostat certified copies of this order, if applied for, be made available to the parties upon compliance of all necessary formalities.

(Sabyasachi Bhattacharyya, J.)