

15.02.2021

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ns Ct.04

CPAN 1267 of 2019
In
S.A. No. 150 of 2019
With
I.A. No.CAN 4 of 2020 (Old CAN 1974 of 2020)
With
CAN No.5 of 2020
Abhijit Chakraborty.
Vs.
Roma Chatterjee alias Rama Chatterjee.

Mr. Rabindra Narayan Dutta,
Mr. Sibasis Ghosh,
Mr. Hare Kirshna Halder,
Mr. Koushik Bhattacharyya for applicant.

Mr. Tapas Kr. Mannafor alleged contemner.

This contempt application has been assigned to this Bench.

Mr. Dutta, learned advocate appears on behalf of applicant, who is decree holder. The decree is for eviction. He submits, undertaking was filed by alleged contemner to make over peaceful and vacant possession of decretal premises at 44F, Gokul Boral Street, Kolkata – 700 012, to applicant by 30th September, 2019. In spite of such undertaking, alleged contemner continues to be in possession. Hence, this application. He submits, Supreme Court in similar situation has directed police help, to enforce

compliance. He relies on **order dated 24th November, 2010 in Contempt Petition no.289 of 2010 in S.L.P. (C) no.13704 of 2010 (D. M. Belgamvala vs. M/s Tamilnadu Real Estates (P) Ltd.)**. He also relies on **order dated 12th May, 2011 of Supreme Court in I.A. no.3 of 2011 in Civil Appeal no.5310 of 2010 [Ram Prakash Sharma vs. Babulal irla (D) By Lrs. & Ors.]**. Mr. Manna, learned advocate appears on behalf of alleged contemner and submits, the contempt application has not been served. His client has taken out application for recall of order dated 18th June, 2019.

We extract two passages from order dated 18th June, 2019.

“Since the decree-holder agreed to the plea, the appellant was required to file an affidavit of undertaking. An affidavit of undertaking has been filed and the appellant has unequivocally agreed to make over peaceful and vacant possession of the decretal premises at 44F Gokul Boral Street, Kolkata – 700 012 to the decree-holder by September 30, 2019.

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Accordingly, it is recorded that in the event possession is made over by the appellant to the decree-holder by September 30, 2019, the decree would stand satisfied and

the appellant would not be liable to pay any further money on account of occupation charges or otherwise. The decree-holder has graciously accepted such position. S.A.T. 199 of 2018 and CAN 4118 of 2018 are disposed of on the above basis.”

The first passage refers to alleged contemner having agreed to make over peaceful and vacant possession by 30th September, 2019 as in her undertaking. The second passage is direction of Court made on contingency of the undertaking being fulfilled. The direction is that on fulfillment, alleged contemner would not be liable to pay any further money on account of occupation charges or otherwise. In any event the second appeal stood disposed of.

Supreme Court in **D. M. Belgamvala** (supra) and **Ram Prakash Sharma** (supra) had made directions for police help on breach of undertaking given at the time of dismissal respectively of the special leave petition and appeal. That is not the case here. The second appeal was not dismissed on no merit or no question of law arisen but on an order of compromise. The compromise has failed. There cannot be any action in contempt for breach of undertaking of agreement. What is more important is there is no appeal pending on a decree confirmed in first appeal. Applicant must find remedy in execution.

The contempt application is disposed of as
above.

(Arindam Sinha, J.)

(Suvra Ghosh, J.)