

APO/14/2021
With
CS/120/2020

IA No.GA/1/2021

IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction

M/S. PRETORIA PROPERTIES LLP
Versus
NAGENDRA KUMAR RATHI AND ORS.

BEFORE:
The Hon'ble JUSTICE I. P. MUKERJI
AND
The Hon'ble JUSTICE SUBHASIS DASGUPTA

Date : 4th February, 2021.

(Via Video Conference)

Appearance:
Mr. Ahin Chowdhury, Sr. Adv.
Mr. D. Mandal, Adv.
Mr. A. Banerjee, Adv.
Mr. B. Kumar, Adv.
Mr. S. Ghosh, Adv.
Mr. D. Sen, Adv.

Mr. Jayanta Mitra, Sr Adv.
Mr. Aniruddha Mitra, Adv.
Ms. Atasi Sarkar, Adv.

The Court : This is an appeal from an ad interim order dated 9th December, 2020 made by a learned single judge of this court in an interlocutory application (IA No.GA/2/2020) connected with the above suit.

By the said order, the first to third respondents/plaintiffs were, prima facie, held to be in actual possession of premises no.6A, Pretoria Street, Kolkata. The appellant and the fourth and fifth respondents were restrained by an order of injunction from interfering with the possession of the said respondents/plaintiffs.

The third defendant, Pretoria Properties LLP, appeals from that order.

From the impugned order, we find that directions were made for filing affidavits. We are told that the appellant has not till date filed any affidavit-in-opposition.

After hearing learned counsel for the parties, we are of the view that there is nothing wrong in principle with the impugned judgment and order except that the prima facie finding that the first to third respondents were in actual physical possession of the entire 6A, Pretoria Street, Kolkata, could not have been arrived at even on a prima facie assessment of the case.

In those circumstances, we appoint Mr. Udayan Chakraborty, Advocate, Bar Library Club and Mr. Joydeep Ray, Advocate, Bar Association (Room No.2) as Joint Special Officers at an initial remuneration of 1500 Gms each to be shared equally by Mr. Chowdhury's and Mr. Mitra's clients to visit the said premises and ascertain which part of the premises is in possession of which party and to file a report before the learned single judge by 11th February, 2021. On the basis of the petition, the affidavits to be exchanged, and the report and any exception thereto, the learned single judge is requested to ascertain the prima facie case of the parties with regard to possession and to pass appropriate orders. All the parties to the suit will maintain the status quo as of now and the status quo on the basis of the report with regard to possession for a period of three weeks from date or until further order to be passed by the learned single judge in the interim application, whichever is earlier. Copies of the report are to be circulated by the Joint Special Officers to the parties, expeditiously.

The appellant and the fourth and fifth respondents shall file their affidavit-in-opposition before the trial court by 9th February, 2021. Affidavit-in-reply, if any, may be filed by 12th February, 2021.

List the interim application before the learned single judge on 15th February, 2021, subject to the convenience of the bench.

The appeal (APO/14/2021) and the connected application (IA No.GA/1/2021) are heard dispensing with all formalities and disposed of by this order.

Since we are disposing of the appeal, this limited interim order is subject to extension, if any, by the learned single judge.

(I. P. MUKERJI, J.)

(SUBHASIS DASGUPTA, J.)

bp.