

ORDER SHEET
APOT 43 OF 2021
WITH
EC 187 OF 2020
GA 1 OF 2021
IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
ORIGINAL SIDE

JAIDEEP HALWASIYA
Versus
RISHABH BENGANI

BEFORE:

The Hon'ble JUSTICE I. P. MUKERJI

The Hon'ble JUSTICE MD. NIZAMUDDIN

Date : 15TH March, 2021.

Appearance:
Mr. Reetobroto Mitra, Adv.
Mr. A. P. Gomes, Adv.
Ms. D. Dey, Adv.
...for the appellant

Mr. Suman Dutt, Adv.
Mr. A. Mandal, Adv.
Mr. A. Chowdhury, Adv.
...for the respondent

The Court : This appeal from a judgement and order dated 1st March, 2021 passed by the executing Court is formally admitted.

Since the issue involved is very short, we have heard out the appeal and are disposing of the same dispensing with all formalities.

On 1st March, 2021, when the matter came up before the executing Court, it was contended on behalf of the appellant that the execution application was not maintainable under Section 13 read with Section 2 of Bengal Money Lenders Act, 1940. The Court recorded that a Special Leave Petition challenging the decree was pending before the Court.

On the same day, that is, 1st March, 2021, the learned judge observed that the judgement debtor was required to be given some more time and made directions for filing of affidavits.

However, the learned judge directed that the Court's earlier order dated 29th January, 2021 would continue.

Now, on 29th January, 2021, the Court had passed orders in terms of prayers (f) and (h) of Column 10 of the Tabular Statement which

tantamounted to an order of injunction restraining the appellant/judgement debtor from transferring a huge area and number of immovable properties and substantial movable property as well.

Subsequently, on 8th March, 2021, the Special Leave Petition was dismissed by the Supreme Court.

Now, Mr. Mitra, learned counsel appearing for the appellant urges us to consider the issue of non-maintainability under Section 13 read with Section 2 of Bengal Money Lenders Act, 1940.

He also submits that this Court should go into the question whether the said order of injunction should be restricted to a proportionate value of the property sufficient to satisfy the decree.

We are of the opinion that the only ground on which the learned judge presiding over the executing Court stayed his hands was pendency of the Special Leave Petition.

Now, the Special Leave Petition has been dismissed. The executing Court is allowed to exercise its jurisdiction without any fetter.

In that view of the matter, we dispose of this appeal by observing that it would be open to the appellant/petitioner to urge the points raised in this appeal before the learned judge by way of an application or in the pending execution application.

On such question being raised, the Court will decide the same without in any way being influenced by any observation made by us in this order.

This appeal (APOT No.43 of 2021) along with the connected application (GA No.1 of 2021) is disposed of accordingly.

(I. P. MUKERJI, J.)

(MD. NIZAMUDDIN, J.)

