

ODC-1

IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
ORIGINAL SIDE
[COMMERCIAL DIVISION]

APOT/108/2021
WITH EC/71/2021

IA NO:GA/1/2021

MICKY METALS LIMITED
VS.
MONOJIT CHAKRABORTY
.....

BEFORE:
The Hon'ble JUSTICE I. P. MUKERJI
AND
The Hon'ble JUSTICE ANIRUDDHA ROY
Date : 4th August, 2021.
[VIA VIDEO CONFERENCE]

Mr. Rupak Ghosh, Mr. Ratul Das, Mr. Rajesh Upadhyay,
Ms. S. Biswas, Advs...for appellant.

The Court : We admit the appeal. There seems to have been a serious communication gap between learned counsel and the Hon'ble trial court at the time of consideration of the application for execution.

If we read the orders of the trial court dated 5th March, 2021 and 23rd March, 2021 in the section 9 application together, it will appear that initially in that application an order of injunction restraining transfer of the shop room was made by this court. Subsequently it was vacated by the final order on the ground that the remedy by way of execution had ripened in the meantime.

We do not see how on a proper execution application being made, where more or less the self-same order was prayed for, it was refused on the ground that earlier it had been vacated.

That is why we say that there must have been a serious communication gap between learned counsel and the court.

An affidavit of service is on record. None appears for the respondent.

In the facts of this case, we are not at all minded to keep this appeal pending because that would delay the legal proceeding.

Dispensing with all formalities, we treat the appeal on the day's list and dispose of the same by setting aside the order dated 28th June, 2021 excepting that the part directing the judgment debtor to file his affidavit of assets and remand the execution application to the learned trial court. At this point of time some protective measure is required by the award holder. We pass an order in terms of prayer [m] of the tabular statement. The other prayers in the tabular statement may be considered by the executing court.

The appeal and the connected application are disposed of accordingly.

(I. P. MUKERJI, J.)

(ANIRUDDHA ROY, J.)

pkd.