

IA No. GA 1 of 2021
APOT No. 143 of 2021
with
EC No. 113 of 2021
IN THE HIGH COURT AT CALCUTTA
In appeal from its
ORDINARY ORIGINAL CIVIL JURISDICTION
CIVIL APPELLATE JURISDICTION

Jagat Singh Chopra & Anr.
Versus
Raj Singh Chopra

Before:
The Hon'ble Justice I. P. MUKERJI
And
The Hon'ble Justice ANIRUDDHA ROY
Date: 17th September 2021

Appearance:
Mr. Sakya Sen, Sr. Advocate
Mr. Sukrit Mukherjee, Advocate
Mr. Anirban Pramanick, Advocate
Mr. Sabyasachi Bhattacharjee, Advocate
for the appellants

Mr. Sabyasachi Choudhury, Advocate
Mr. Sarvapriya Mukherjee, Advocate
Mr. Avik Banerjee, Advocate
Mr. Rajib Mullick, Advocate
Mr. Rakesh Sarkar, Advocate
for the respondent

The Court: As the point involved does not warrant pendency of the appeal before us, we are disposing of the appeal and the connected application, against an interim order dated 14th September 2021 made by a learned single judge of this Court in an execution application, after dispensing with all formalities.

By the impugned order the bank accounts of the judgment-debtors mentioned in paragraph (e) of the tabular statement are attached to the extent that they are restrained from dealing with those accounts without depositing a sum of Rs. 90 lakhs with the learned Registrar, Original Side.

During the course of this appeal we ascertained from Mr. Sakya Sen, learned advocate representing the appellant/judgment-debtors that the total balance in those accounts is Rs. 30 lakhs.

The following controversies between the parties are involved which we have gathered after hearing learned counsel:

- (a) The appellants say that the award is not executable.
- (b) The application under section 47 of the Code of Civil Procedure has been filed by them inter alia urging this point.
- (c) In the application challenging the award under section 34 of the said act, this Court had directed the appellants to secure Rs. 90 lakhs for stay of operation of the award pending hearing of that application but that security has not been furnished.
- (d) According to the terms of the award made and published in 2016 a property at Lake Gardens in which the respondent had 1/3 share was to be transferred to the appellants. The respondent is ready and willing to transfer it but the appellants are not.
- (e) The value of the property is stated to have increased to Rs. 4 crores. More delayed the transfer, the more gain will result to the appellants.
- (f) The award provided for reciprocal obligations of which the transfer was the ultimate stage. The preliminary stages have not been crossed.

Mr. Sen's short submission is that the learned single judge ought to have considered the issues involved in the section 47 application before proceeding with the execution.

All these are very contentious issues. We are of the view that these contentions were not argued in detail before the trial court and should be considered by the Court threadbare. We find from perusal of the order that this application has been made returnable after two weeks from the date of the order that is around the end of September, 2021.

Considering all these matters we propose to pass the following order.

- (a) The returnable date of the application before the learned single judge is preponed to 22nd September 2021, when it should appear as “New Chamber Application”, subject to the permission and convenience of the bench. It is to appear along with section 47 application [IA No. GA 1 of 2021 (Old No. GA 340 of 2020)].
- (b) From the bank accounts mentioned in prayer (e) of the tabular statement the appellants will be permitted to spend only Rs. 5 lakhs in the usual course of affairs until further orders by the learned executing court.

All questions are kept open before the executing court.

(I. P. MUKERJI, J.)

(ANIRUDDHA ROY, J.)

R. Bose