

21st January,
2022
(AK)
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W.P.A 674 of 2022

Marathon Electric Moors (India) Limited and another
Vs.
Syama Prasad Mookerjee Port and another

(Via Video Conference)

Mr. Siddhartha Banerjee
Mr. Snehayan Banerjee
...for the petitioners.

Mr. Subhankar Nag
Mr. Snehashis Sen
Mr. Abhishek Banerjee
Mr. Aditya Sarkar
...for the respondents.

Affidavit-of-Service filed in court today be kept on record.

The respondent-port takes a preliminary objection to the maintainability of the writ petition on the ground that an appeal is maintainable under Section 9 of the Public Premises (Eviction of Unauthorized Occupants) Act, 1971 against an order passed under Section 7 of the said act.

It is contended that although the operation of the order passed jointly in an eviction proceeding and in a proceeding for arrear rents against the petitioners was stayed by the appellate court, such stay of operation of the order operates in the limited context of possession being taken from the petitioners. In the meantime,

however, possession has been handed over by the petitioners.

Learned counsel appearing for the petitioners contends that a further appeal against the present impugned order would tantamount to an unnecessary multiplication of proceedings, since an interlocutory application before the appellate court in the pending appeal against the order of eviction and arrear rents and damages might be met with an objection on the ground that an appeal is maintainable and in view of the impugned order being patently without jurisdiction, being in contravention of the stay order, for which this court ought to exercise its jurisdiction under Article 226 of the Constitution of India against such patent jurisdictional error on the part of the Estate Officer.

Upon hearing the contentions of both the parties and the relevant provisions, that is, Sections 5, 7 and 9 of the 1971 Act, it is evident that Section 9 provides for an appeal in clear terms against *“every order of the Estate Officer made in respect of any public premises”* under Sections 5, 5(b), 5(c) or 7 of the 1971 Act to an appellate officer who shall be the District Judge. Hence, there is no scope of entertaining the present writ petition, since a more efficacious alternative remedy in the form of an appeal is available to the petitioner.

The logic that unnecessary multiplicity would be created does not cut ice in the present case, since the law

specifically provides for an appeal against the orders passed both for eviction as well as for arrears of rent and damages.

As far as the contention of the petitioner with regard to the impugned order being in violation of the stay order is concerned, it is arguable as to whether the stay of operation of the order which was passed for eviction under Section 5 and arrears of rent under Section 7(1) of the 1971 Act, although the proceeding was couched in the language that the port claimed not only eviction and arrears of rent but also damages, would entail that the order of stay would merely operate as stay of the order passed by the Estate Officer regarding eviction and arrears of rent.

On balance and in the eye of law, the contention of the respondent-port is more viable inasmuch as the subsequent proceedings for realization of subsequent damages, after the eviction order was passed, gives rise to a further and subsequent cause of action, which is not debarred by the operation of the orders of eviction and arrear rent.

Be that as it may, since both the components under Section 7 of the 1971 Act, that is, regarding arrears of rent and damages for unauthorized occupation are appealable within the purview of Section 9 of the 1971 Act, there is no necessity or occasion to exercise the limited factual jurisdiction as vested in this court under

Article 226 of the Constitution of India, since a more elaborate and exhaustive remedy in the form of an appeal on law and facts is available to the petitioner before the appellate forum.

Since usurping the jurisdiction of the appellate forum by this court in each and every case would amount to depriving the parties of a forum, it does not appear to be prudent in the eyes of this court to exercise such jurisdiction in the present case.

In view of the aforesaid reasons, WPA 674 of 2022 is disposed of with liberty to the petitioners to approach the appellate forum, subject to the law of limitation and in accordance with law.

However, it will be open to the parties to raise all questions, including the question of applicability of Section 14 of the Limitation Act and the scope of operation of the blanket orders of extension of limitation passed by the Supreme Court and the Special Bench of this Court at the time of consideration of the delay by the appellate court.

It is further clarified that the merits of the respective contentions of the parties have not been gone into by this court in any manner and the appellate forum will be at liberty to decide the appeal, if preferred by the petitioners within a reasonable period from this day, independently, on its own merits and in accordance with law.

There will be no order as to costs.

Urgent photostat copies of this order, if applied for, be given to the parties upon compliance of all requisite formalities.

(Sabyasachi Bhattacharyya, J.)