

Item-30. 27-09-2022

sg Ct. 8

SA 93 of 2022

Maritime Electrical (P) Ltd.
Versus
Naba Kumar Naskar

The appeal was tendered in the year 1998 but no attempt was made to move this appeal for admission. The matter initially appeared in the warning list thereafter transferred to regular list on 9th September, 2022 and since then, the matter appearing in the list. The appellant is not represented nor any accommodation is prayed for on behalf of the appellant.

The appellate decree dated 30th July, 1997 confirming the judgment and decree passed by the trial court dated 18th September, 1995 in a suit for permanent injunction is the subject matter of challenge in this second appeal. The trial court dismissed the suit on merits. The appeal court affirmed the said decree. The suit was dismissed as the plaintiff simplicitor filed a suit for permanent injunction without claiming for recovery of possession. Both the courts found that the appellant before the institution of the suit was out of possession and it further transpired that the suit property has been transferred in favour of third party. The appellant claimed that the respondent is a sole proprietor of one Metal Engineering Industries and according to the agreement between the parties, the said proprietorship will be converted to a private limited company in which the respondent would be appointed a director. The respondent sold all the assets in favour of the plaintiff at a consideration amount of Rs.60,000/- on condition that the newly constructed company will repay the

bank loan of Metal Engineering Industries on receiving Rs.60,000/- from the newly formed company, the appellate company would possess all the assets of the erstwhile proprietorship concerned. The agreement was marked as Exhibit 7. In the said exhibit, there is no schedule therein. The said agreement only mentions about the machineries. No other property was sold in favour of the appellant. In the present suit reliance was placed on exhibit-9 i.e. plaint filed by the respondent in TS 536 of 1986 which would show that the appellant company carried on business for a period from June 1993 to June 1996. The respondent/defendant also appears to have received Rs.27,500/- from the appellant towards recovery of the loss he suffered because of the steps taken by the bank. However, it appears from paragraph 10 of the plaint that on 18th April, 1997, the respondent and his associate had taken over the possession of the factory and workshop and since then the directors and workers of the appellant company could not enter the factory premises. PW-1 has admitted that they were not in possession of those two rooms and they are not aware whether the respondent is still carrying on any business therein. On the contrary DWs. 1, 2 and 3 have categorically stated that respondents have been carrying on business and running the workshop and factory and the appellant had never run the factory and workshop at Jeliapara Raod. On a clear finding arrived at that the appellant was not in possession after 18th April, 1987 and the respondent is in possession of the factory as well as the workshop together with machinery, both the courts have declined to grant any order of permanent injunction. Moreover, both the courts have taken the view that the appellants

have not prayed for recovery of possession as they are admittedly not in possession.

On such consideration, we do not find any reason to interfere with the findings arrived at by both the courts. The second appeal stands dismissed at the admission stage. However, there shall be no order as to costs.

(Uday Kumar, J.)

(Soumen Sen, J.)