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AKG 18-02-2022
Ct.21

C.O. 858 of 2021
With
IA No. CAN 1/2022
M/s. Sree Durga Board House represented by its Proprietor
Smt. Jayashree Basak & Ors.
Versus
Sri Ranjit Kumar Nag Das & Ors.
(VIA VIDEO CONFERENCE)

Mr. Abhijit Ray,
Mr. Soumen Bhattacharya,
Mr. Tanmoy Kumar Dey,
Mr. Subham Gupta
...for the Petitioners

The petitioners file affidavit of service along with postal receipts and tract reports showing due service on opposite party no. 2 only in connection with CAN 1/2022.

The petitioners also file affidavit of service in connection with C.O. 858 of 2021 along with postal receipts and without any track reports. None appears from the side of the opposite parties.

It appears the petitioners have filed CAN 1/2022 praying for extension of the interim order of stay granted by the Hon'ble High Court on 16.04.2021.

Since this Court decided to hear the revisional application being C.O. 858 of 2021 this day. Therefore, the matter connected to CAN 1/2022 becomes infructuous.

The revisional application is taken up for hearing. The petitioners being the defendants have filed the present application under Article 227 of the

Constitution of India. Being aggrieved by and dissatisfied with the order passed by the learned Judge, 5th Bench, Presidency Small Causes Court at Calcutta in Ejectment Suit No. 514 of 2009 on 26.06.2019 whereby the learned Court below directed during the commission work parties to suit must be present in person and not their representative or the constituted power of attorney holder.

Record shows that the plaintiffs/opposite parties have filed an eviction suit against the defendants in respect of a godown situated on the ground floor of the premises no. 1/B Buddhu Ostagar Lane, Police Station – Amherst Street, Kolkata – 700 009.

It has also come on record that the defendant no. 2 Smt. Jayashree Basak is the proprietor of M/s. Sree Durga Board House along with her son, defendant no. 3. The defendant no. 2 appears to have executed power of attorney in favour of one Netai Chand Saha to look after and manage all legal matters in respect of the disputed godown, pending to be any Court, Tribunals and High Courts and other matter related to such godown.

From the report of the Commissioner submitted before the learned Court below, it appears that during the commission work, the said constituted power of attorney holder of the defendant no. 2 happens to be present to which the Commissioner seems to have

objection.

The learned Court below appears to have accepted to the prayer of the Commissioner and has prevented the said constituted power of attorney holder of defendant no. 2 from attending the commission work.

The object behind the execution of power of attorney is to vest legal authorization to a designated person, termed the agent or attorney-in-fact the power to act for another person, known as the principal. The constituted attorney may be given broad or limited authority to make decision about the principal's property, finance, investment and legal matters.

So, it is not known how the learned Court below could prevent the Constituted Attorney of the defendants to attend the Commission work merely on the prayer of the Commissioner.

Therefore, this Court is of the view that there is no necessity for personal appearance of the petitioner at the time of commission. She has already entrusted with Netai Chand Saha to represent her and manage all her legal matters arising out of the disputed godown. The impugned order suffers from material irregularity is hereby set aside.

Accordingly, the revisional application being **C.O. 858 of 2021** is allowed.

Interim order, if any, stands discharged.

CAN 1/2022 is disposed of.

There shall be no order as to costs.

Parties are to act on the server copy of this order duly downloaded from the official website of this Court.

Urgent Photostat certified copy of this order, if applied for, be given to the parties, upon compliance of all formalities.

(Kesang Doma Bhutia, J.)