

3.11.2022

**MAT 871 of 2021
With
CAN 1 of 2021**

**Sri Sanjay Kumar Dasgupta & Anr.
Vs.
Sri Sanjib Kumar Dasgupta and Ors.**

Mr. Debasis Kar

Mr. Subhajit Chowdhury

... ... for the appellants

Ms. Chama Mookherji, Sr. Adv.

... ... for the State

This intra-court appeal is at the instance of the respondent no.4 and 5 in the writ petition challenging the order of the learned Single Judge dated 24th August, 2021 whereby in WPA 2694 of 2021 filed by the respondents herein (writ petitioners) a direction was issued by the learned Single Judge to the Officer-in-Charge of Bhatpara Police Station to escort the appellants out of the premises in question along with the belongings.

On the perusal of the record it is noticed that the writ petition was filed by respondent nos.1 and 2 herein (writ petitioners) with the plea that the appellants are their son and daughter-in-law, who were mistreating them and were pressurizing them to transfer the ownership of the house in question. Hence, a prayer was made to direct the official respondents to take appropriate action on the notice of demand of justice and also to escort the appellants to leave the house and deliver vacant possession.

Record further reveals that after passing of the impugned order learned Single Judge on 31st August, 2021 had taken note of the fact that the earlier direction was complied to and had accordingly disposed of the writ petition.

Submission of learned counsel for the appellants is that though the notice of the writ petition was served upon the appellants but the matter was upgraded on 24th August, 2021 and in the absence of the appellant the hearing took place without notice to the appellants, therefore, the appellants could not advance the relevant arguments before the learned Single Judge. In this background learned counsel for the appellants has prayed for remanding the matter back to the learned Single Judge for fresh adjudication.

Affidavit of service filed by the appellants today indicates that the private respondents in the appeal are served but they have not come forward to oppose this appeal.

We find that the impugned order dated 24th August, 2021 has been passed without giving a proper opportunity to the appellants. Hence, we set aside the order dated 24th August, 2021. Consequently subsequent order dated 31st August, 2021 also does not survive. The writ petition is restored to its original possession with the request to the learned Single Judge to decide the petition afresh in accordance with law.

Having regard to the nature of controversy involved in the matter and considering the fact that it is an old petition we expect that the writ petition will be heard and decide as expeditiously as possible.

The appeal is accordingly allowed.

Connected application is also disposed of.

(Prakash Shrivastava, C.J.)

(Rajarshi Bharadwaj, J.)