

13.12.2022
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Ct. no. 652
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**C.O. 2127 of 2021
With
CAN 1 of 2022**

**Bharat Petroleum Corporation Limited
Vs.
Petrolube Centre & Ors.**

Mr. Vikram Wadehra
Mr. Raunak Bose ...for the petitioner

Mr. Sashwat Nayak
Mr. A. Agarwala
Mr. B.N. Joshi
Ms. Shatabdi Kundu ...for the opposite party

The dispute in the present case pertains to an order passed by learned District Judge at Alipore in P.P. Appeal no. 9 of 2021 whereby the learned District Judge at Alipore stayed an order of learned Estate Officer passed under the public premises (Eviction of Unauthorised Occupants) Act, 1971 directing the opposite parties to make payment of a sum towards damages/rent for unauthorized occupation.

Learned counsel for the petitioner submits that the order sought to be assailed before the appellate court is erroneous on the face of it since it has been passed without jurisdiction and in a routine manner. It is further alleged that the impugned order dated 31st August, 2021 passed by learned Estate Officer inter alia decides on the aspects of jurisdiction which cannot be challenged in an

appeal under Section 9 of the said Act. Moreover, his further contention is that it is apparent that the entire intention of the opposite parties is to drag the proceeding and to enjoy the property for an indefinite period by unlawful means and learned District Judge at Alipore has failed to appreciate that the proceeding before the learned Estate Officer is a summary proceeding and without considering this aspect, he has admitted the appeal and passed the impugned order granting an order of stay initially up to 24.9.2021 which was subsequently extended from time to time, without making any endeavour to dispose of the appeal itself.

Learned counsel for the petitioner strenuously argued that section 15 read with sections 5 and 7 of the Act confers exclusive jurisdiction on the estate officer appointed under section 3 of the Act to deal with the applications under section 5 & 7 and the learned District Judge at Alipore before passing the order of stay should have considered that jurisdiction conferred by the statute cannot by contract be conferred upon an arbitrator and as such practically the appeal is without any merit and said self contained statute does not allow for an appeal from order beyond the provisions of Sections 5 and 7 of the said act of 1971. Section 15 of the Act bars and prohibits any court from entertaining any suit or proceeding and section 5 and section 7 of the Act categorically empower the estate officer appointed under

section 3 to deal with applications for payment of rent and damages in respect of public premises. He further contended that it is settled position of law that any other order, especially those touching the issue of jurisdiction and issues other than contemplated under section 5 and 7 of the Act can only be assailed before High Court exercising power under Article 227 of the constitution of India.

Learned counsel for the opposite party submits that order impugned in the said application does not suffer from any jurisdictional error. The opposite parties were not informed of such eviction proceeding and suddenly they were thrown out of the said retail outlet despite the fact that their goods lying stored threat. It is further alleged that petitioner all along seeking to take forcible possession of the store from opposite parties. The parties are governed by Arbitration clause without considering the case of the opposite parties, the estate officer passed two orders both dated 31st August, 2021, one under section 5 and other under section 7 of the Act in complete violation of natural justice. As such opposite parties submit that there cannot be any ground questioning the maintainability of the appeals.

In the appeal, the opposite parties have taken certain specific grounds which needs to be disposed of in the appeal.

This application has been assailed against an interim order of stay.

Having heard the learned counsel for both the parties and also having considered the materials available in the record, C.O. 2127 of 2021 is hereby disposed of without interfering with the order impugned by making a direction upon the learned District Judge at Alipore, South 24 parganas to dispose of the appeal within a period of six months from the date of communication of the order, without granting any unnecessary adjournments to either of the parties. However, it is made clear that this court has not entered into the merits of the case and all the points shall be kept open before the appellate court to argue and to dispose of the same in accordance with law.

Pending application, if any, also stands disposed of.

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

(Ajoy Kumar Mukherjee, J.)