

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
(Appellate Side)

MAT 1337 of 2021
With
IA NO: CAN 1 of 2021
CAN 2 of 2021

(Through Video Conference)

Reserved on: 05.01.2022
Pronounced on: 10.01.2022

Sanjit Kumar Paul

...Appellant

-Vs-

Bhaskar Paul & Ors.

...Respondents

Present:-

Mr. Samiran Giri,
Mr. Khairul Alam, Advocates
... for the appellant

Mrs. Arundhati Banerjee,
Mr. Kaustav Banerjee, Advocates
... for the respondent No. 1

Mr. Subir Sanyal,
Mr. Mihir Kundu,
Ms. Sumouli Sarkar, Advocates
... for the CESC Limited

Coram: THE HON'BLE JUSTICE PRAKASH SHRIVASTAVA,
CHIEF JUSTICE
THE HON'BLE JUSTICE KESANG DOMA BHUTIA,
JUDGE

Prakash Shrivastava, CJ:

1. This appeal is directed against the interlocutory order of the learned Single Judge dated 30th of November, 2021 passed in WPA No. 16560 of 2021 whereby the writ petition has been kept pending and by way of interim direction CESC Limited has been directed to

give a new electric connection to the writ petitioner (respondent No. 1 herein) from same meter board which is already existing in the premises in question.

2. The submission of the learned Counsel for the appellant is that the partition is already held between the parties, therefore, learned Single Judge has proceeded on the incorrect premises.

3. Learned Counsel for the respondent No. 1 has submitted that though the partition has taken place but there is not demarcation.

4. Learned Counsel for the respondent CESC has submitted since the learned Single Judge has proceeded on incorrect premises about partition, therefore, the matter to be remanded back for fresh decision and that the order of the learned Single Judge in the case of **Nabin Agarwal & Another v. CESC Limited & Others, 2003 (4) CHN 541** has already been set aside by the division bench.

5. Having heard the learned Counsel for the parties and perusal of the record, we have noticed that the learned Single Judge has proceeded on the premises that there was no partition between the parties and property was admittedly a co-ownership of the appellant and the respondent No. 1.

6. Learned Counsel for the appellant has produced the partnership deed before this Court and has also drawn the attention of this Court to paragraph 1 of the writ petition wherein the fact mutual partition and separation of residence has been mentioned. Hence, we are of the opinion that the issue needs to be considered and decided by the learned Single Judge having due regard to the factum and material relating to partition between the parties. So far as the judgment in the

matter of **Nabin Agarwal & Another v. CESC Limited & Others** is concerned it has been pointed out by the learned Counsel for the CESC that the division bench by an order dated 27.10.2006 in APO No. 99 of 2004 has already set aside the said single bench judgment. The record reflects that the learned Single Judge has kept the writ petition pending till the decision on the reference made by the impugned order.

7. In the above factual background the Counsel for the parties are granted liberty to make prayer to the learned Single Judge to decide the writ petition itself considering the facts relating to the partition between the parties and also considering the order of the division bench in APO No. 99 of 2004 whereby the judgment in the case of **Nabin Agarwal & Another v. CESC Limited & Others** by the learned Single Judge has been set aside. The electricity connection which has been granted by the impugned order will be treated as an interim arrangement till the final decision of the writ petition. The appeal is accordingly disposed of.

(PRAKASH SHRIVASTAVA)
CHIEF JUSTICE

(KESANG DOMA BHUTIA)
JUDGE

Kolkata
10.01.2022

PA(SS)