

OD-01

ORDER SHEET
IN THE HIGH COURT AT CALCUTTA
SPECIAL JURISDICTION(REVIEW)
ORIGINAL SIDE

RVWO/3/2020
CYGNUS DEVELOPERS (INDIA) PVT LTD
-VS-
THE INSPECTOR GENERAL OF REGISTRATION AND COMM. OF
STAMP REV

BEFORE:
HON'BLE JUSTICE SOUMEN SEN
AND
HON'BLE JUSTICE ARINDAM MUKHERJEE
DATE: 2ND SEPTEMBER 2022.

Mr. J. Kar, Sr. Adv.; Mr. M. Basu, Adv.; Mr. M. Dutta, Adv.; Mr. L.R.
Mondal, Adv., for applicant.
Mr. A. Banerjee, Sr. Adv. & Sr. Standing Counsel; Ms. I. Banerjee, Adv.,
for respondent.

The Court: This review application is specially assigned to this
Bench. The applicant has prayed for review of a portion of the order dated

27th March, 2019, whereby, while permitting the Trial Court to take a decision in the matter with regard to the custody of the original deed to be produced at the time of trial, observed that it would be the prerogative of the Trial Court to take a decision in the matter in accordance with law on completion of the proceedings.

This particular phrase, “on completion of the proceedings”, according to the review application, has resulted in complications in the matter for which the instant review application has been filed.

The basis of the review application appears to be the order dated 6th December, 2019, passed by the learned Metropolitan Magistrate, Calcutta, in GR No.2738 of 2014 in connection with an application filed by the applicant for return of the original document. The relevant portion of the said order is reproduced below:

“Consequently a writ petition was filed by the applicant being WP 409 of 2016 praying for a direction upon the Asst. Registrar of Assurances Kolkata-1 to return/handover the relevant deed of conveyance to the applicant. Subsequently, in connection with another proceedings being APO No.300 of 2018 initiated before the Hon’ble High Court at Calcutta, a direction was passed by the Hon’ble Court with regard to the

prayer made by the applicant for handing over of the said deed, it has been observed by the Hon'ble Court as follows:-

“...the entire issue with regard to the deed in question is a subject matter for adjudication before a Criminal Court of competent jurisdiction. That court is likely to require the original deed to be produced at the time of trial. It will be that court's prerogative to take a decision in that matter in accordance with law on completion of the proceedings...”

in view of such observations, the applicant has prayed for the direction as aforesaid.

A bare perusal of the direction given by the Hon'ble Court would reveal that the issue of return of the deed in question, has been directed to be taken up after the conclusion of the proceedings, by the Hon'ble Court, and not during pendency of the same. The deed in question has been a subject matter of investigation, and the same appears to be an alamat of this case, which would be required to be produced at the time of trial. As it is lying in the custody of a government authority, the Cr.P.C provides procedures to compel its production and as such, there is no necessity to compel its production at this moment. Considering the same, the prayer is rejected.

To 28-02-20 for awaiting order. ”

Mr. Joydip Kar, learned senior counsel appearing for the applicant, submitted that the aforesaid phrase is an error apparent on the face of the record which will be explicit when read in the context of the earlier portion of the order.

We have read the order under review carefully. The issue as regards return of the document after completion of the proceedings was not gone into as it was not required to be decided in the appeal.

However, we hasten to add that the said observation made in the order under review was possibly for the purpose of a fair investigation. The co-ordinate Bench at the time of passing the order under review was not apprised of the fact that the applicant had much prior thereto had filed a criminal revision being CRR No.3696 of 2016 for quashing of the entire proceeding in which the chargesheet had already been filed. In the said proceeding initially an order was passed on 28th November, 2016, by which all further proceedings in GR No.2738 of 2014, pending before the learned Metropolitan Magistrate, Calcutta, arising out of Hair Street P.S. Case No.690 of 2014, dated 11th December, 2014, initiated under sections 467/468/471/420/379/411/120B of the IPC, was stayed and the said stay order appears to be in operation till September 5, 2019.

Had this fact been known to the co-ordinate Bench, then such direction might not have been passed.

We feel that it is not necessary at this stage to comment on stage for return of the document in view of the fact that all further proceedings in the GR Case have been stayed and in the aforesaid backdrop, we feel that it is the learned Single Judge, in seisin of the quashing proceeding, would be the appropriate Court to decide on the issue of return of the original document. We have been informed that the charges have not been framed till date. The learned Metropolitan Magistrate, Calcutta, cannot also decide as to the return of the document at this stage when the trial has remained stayed. Moreover, the learned Metropolitan Magistrate, Kolkata, could not have decided the said application for return of the document in view of the observation made to the order under review and also in view of the order passed in CRR No.3696 of 2016, dated 28th November, 2016. We are not aware whether the said order of stay is still in force. However, we are of the opinion that in view of pendency of the quashing proceeding, we should not decide the said application and leave it open to the parties to approach the learned Single Judge in seisin of the quashing proceedings for appropriate relief and our observations to the aforesaid extent, namely “on completion of the proceedings” stand recalled. We direct the parties to bring

on record this order before the learned Single Judge if any prayer for return of document is made.

With the above observations, the review application accordingly stands disposed of. However, there will be no order as to costs.

(SOUMEN SEN, J.)

(ARINDAM MUKHERJEE, J.)

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