

APO/38/2022
with
WPO/1276/2022
IA NO:GA/1/2022

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
ORIGINAL SIDE

M/S. BHARAT EXPRESS
VERSUS
STATE OF WEST BENGAL AND ORS.

BEFORE:
THE HON'BLE CHIEF JUSTICE PRAKASH SHRIVASTAVA
THE HON'BLE JUSTICE RAJARSHI BHARADWAJ
DATE : 8TH APRIL, 2022

APPEARANCE:

Mr. Tapas Kumar Manna, Advocate
.....for the appellant

Mr. Manoj Malhotra, Advocate
Mr. Suman De, Advocate
... for the State of WB

Mr. Samrat Chowdhury, Advocate
Mr. Nimai Chandra Konar, Advocate
...for the Respondent nos. 2 and 6

The Court:- This appeal is at the instance of the respondent no.5 in the writ petition challenging the order of the learned Single Judge dated 14th March, 2022 whereby the learned Single Judge has disposed of the writ petition by directing the official respondents to extend police assistance to the respondent no.2 herein (writ petitioner) for implementation of the order dated 15th February, 2020.

It has been pointed out by learned counsel for the respondent no.2 that the lease deed dated 15th February, 2018 was executed by the respondent no.2 in favour of the appellant, M/s. Bharat Express providing an area of 200 sq.mt. for the purpose of godown for storage. The period of lease was from 1.6.2017 to 31.5.2020. The respondent no.2 had obtained the order of eviction from the Estate Officer which is dated 15th February, 2020 and for the implementation of the said order, it had approached the Writ Court by filing the petition in which the order under challenge has been passed.

Submission of learned counsel for the appellant is that before the learned Single Judge, the appellant was not served and the appellant, M/s.

Bharat Express was impleaded through its proprietor Sri Giriraj Kumar Vyas who had already died on 3.5.2021. Therefore, the order has been passed against a dead person, that too, without serving the concerned firm.

Learned counsel for the respondent no.2 has opposed the prayer by submitting that the appellant has not challenged the eviction order dated 15th February, 2020 and that a civil suit has been filed by the appellant through the original proprietor, Sri Giriraj Kumar Vyas, but in that suit also, even after 10.5.2021, no intimation of death of the said proprietor was given and that the writ petition was only for the police assistance to execute the eviction order, therefore, even otherwise, the appellant had no right of hearing before the learned Single Judge.

Having heard learned counsel for the parties and perusing the records, we find that if the appellant was not noticed or not served in the writ petition before the learned Single Judge, then proper remedy available to the appellant is to file an appropriate application for recall of the order before the learned Single Judge. The same position exists if the original proprietor impleaded in the writ petition had died in the meanwhile.

We have refrained ourselves from going into the merits of the matter at this stage, because the order of eviction is not under challenge and the scope of the writ petition was very limited.

Hence, we dispose of this appeal granting liberty to the appellant to file an appropriate application for recall before the learned Single Judge. If such application is filed by the appellant, the same will be considered and decided in accordance with law.

(PRAKASH SHRIVASTAVA, C.J.)

(RAJARSHI BHARADWAJ, J.)