

OD-1

IA No. GA 1 of 2021
IA No. GA 2 of 2021
IA No. GA 3 of 2021
APOT No. 162 of 2021
with
ASFC No. 3 of 2005
IN THE HIGH COURT AT CALCUTTA
In appeal from its
ORDINARY ORIGINAL JURISDICTION
CIVIL APPELLATE JURISDICTION

Kishore Kumar Bose & Ors.

Versus

West Bengal Industrial Development Corporation Ltd. & Ors.

Before:

The Hon'ble Justice I. P. MUKERJI

And

The Hon'ble Justice ANIRUDDHA ROY

Date: 8th February 2022

(via Video Conference)

Appearance:

Mr. Sankar Prashad Delapati, Advocate

Mr. S. Dewan, Advocate

Mr. Sudhakar Thakur, Advocate

for the appellant

Mr. Jaydip Kar, Sr. Advocate

Mr. R. S. De, Advocate

for respondent no.1

RE: IA No. GA 2 of 2021

The Court: Sufficient cause is shown.

We condone the delay in preferring the appeal.

The application for condonation of delay (IA No. GA 2 of 2021) is allowed.

RE: IA No. GA 1 of 2021

Considering the facts and circumstances, we allow this application by passing an order in terms of prayer (b) of the petition.

The application (IA No. GA 1 of 2021) is allowed to the above extent only.

The department is directed to register the appeal immediately.

RE: IA No. GA 3 of 2021
APOT No. 162 of 2021

West Bengal Industrial Development Corporation Limited, the respondent no.1 is a State Financial Corporation within the meaning of the State Financial Corporation Act, 1951. It took out proceedings in this court under sections 31 and 32 of the said Act against the respondent nos.3 to 7. It was against the respondent no.7 as the borrower and against respondent nos 3, 4, 5 and 6 as guarantors to the loan advanced by the respondent no.1 to the respondent no.7.

The learned single judge by the impugned judgment and order dated 25th February, 2021, inter alia, held that since the respondent nos. 3 to 6 in violation of the order of injunction of this court had dealt with the Harinavi property, all the occupiers of that property were declared not to have any right, title and interest therein. The Receiver was directed to remove all those occupiers with police assistance.

The appellants before us state that they are purchasers of a part of that property which was not covered by the said order of injunction passed by this court. Hence, the impugned order dated 25th February, 2021 should not be made applicable to the property and to that extent vacated.

Mr. Kar, learned senior advocate appearing for the respondent no.1 submits that at the time of consideration of the

application before the learned single judge a notice was served upon the appellants but they chose not to appear before the court. Such assertion is denied by learned advocate for the appellants.

We are of the view that whether the appellants are purchasers of a part of that property and if so whether that part of the property was not the subject matter of the order of injunction made by this court on 7th September, 2005 and the other facts and circumstances under which the appellants are in possession of the said part of the property are very serious questions of fact which have to be investigated and adjudicated upon. The appellants should be given a chance to have those questions of fact adjudicated by the competent court. The court of appeal is not such a court to be invited to engage in this fact finding exercise.

We do not find any reason to interfere with the directions made in the order dated 25th February, 2021. However, we grant leave to the appellants to approach the learned single judge by an appropriate application to have their claim adjudicated upon. In that event all questions are kept open before the learned single judge. Any steps taken further to the impugned judgment and order dated 25th February, 2021 will abide by the result of such an application, if made by the appellants.

The advocate-on-record for the appellants will inform the receiver of the gist of this order and keep him informed of the steps that his clients take or propose to take in the future.

The appeal (APOT/162/2021) and the stay application (GA/3/2021) are disposed of by this order.

(I. P. MUKERJI, J)

(ANIRUDDHA ROY, J.)

R. Bose/sb