

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
ORIGINAL SIDE

**APOT/111/2022
WITH
CC/19/2022
WPO/577/2017
IA NO: GA/1/2022**

**ARTI VERMA
VS
M/S. ANNDATA DEVELOPERS PVT. LTD. & ORS.**

And

**APOT/112/2022
WITH
CC/58/2021
WPO/577/2017
IA NO: GA/2/2022**

**ARTI VERMA
VS
BRIJRATAN MUNDHRA & ORS.**

**BERORE: THE HON'BLE JUSTICE ARIJIT BANERJEE
AND
THE HON'BLE JUSTICE APURBA SINHA RAY**

For the appellant	: Mr. Kishore Dutta, Sr. Adv. Mrs. Noelle Dey (Banerjee), Adv. Mr. Dwaipayan Basu Mallick, Adv. Mr. Saunavo Basu, Adv.
For the Anndata Developer Pvt. Ltd.	: Mr. Kalyan Bandopadhyay, Sr. Adv. Mr. Susovan Sengupta, Sr. Adv. Mr. Tapas Saha, Adv. Mr. Debdatta Saha, Adv. Mr. Diprav Deb, Adv.
For the KMC	: Mr. Barin Banerjee, Adv. Mr. Dilip Kumar Chatterjee, Adv.
For the State	: Mrs. Sipra Majumder, Adv. Mrs. Debarati Sen (Bose), Adv.
Heard On	: 02.09.2022, 07.09.2022, 16.09.2022 & 21.09.2022
CAV On	: 21.09.2022
Judgment On	: 17.11.2022

Arijit Banerjee, J.

1. These two appeals arise out of the same set of facts and hence have been taken up together for hearing and disposal.

2. The appellant in both the appeals is a tenant in respect of portions of the 2nd and 4th floors of premises No. 138 Cotton Street, Kolkata-700007. The appellant challenged a demolition notice issued by the Kolkata Municipal Corporation (in short 'KMC') under Section 411 of the KMC Act, 1980, on August 8, 2016, by filing W.P.O. No. 577 of 2017. The landlord/owner of the said premises, M/S Anndata Developers Pvt. Ltd. (hereinafter referred to as 'Anndata') is a party respondent in the writ petition. The appellant herein filed an application in the writ petition being G.A. No. 1 of 2021 alleging that during pendency of the writ petition, the owner of the premises wrongfully demolished a portion of the second floor of the said premises which was under the occupation of the appellant (herein referred to as 'Arti'). In that application Arti prayed for a direction on Anndata to reconstruct the demolished portion at its cost and restore possession of such reconstructed portion to Arti.

3. The said application was disposed of by a learned Single Judge by an order dated October 19, 2021, the operative portion whereof reads as follows:-

“Yet, in view of the fair undertaking given by learned Counsel for the respondent no. 7 on instruction from his client, the respondent no. 7 is directed to provide adequate temporary accommodation to the applicants for the time being, within reasonable physical proximity of the demolished premises, till possession of the

commensurate portion of the newly constructed building is handed over to the applicants, as per their previous undertaking.

Such temporary accommodation shall be provided by the private respondent, that is, respondent no. 7 within October 22, 2021 positively. The respondent no. 7 shall further ensure that completion certificate is obtained at the earliest from the KMC for handing over possession of a commensurate portion of the newly constructed structure to the applicants as soon as possible. It is further clarified that this order is only of an *ad hoc* nature and shall not affect/prejudice in any manner the rights and contentions of any of the parties in the main writ petition. All questions, including the question of maintainability of the writ petition, are kept open for being decided at the final hearing of the writ petition. The present arrangement shall be subject to any order passed by the appropriate Bench while disposing of the writ petition finally.”

4. Before proceeding further it may be noted that in the said writ petition Anndata, through one of its directors, Brijratan Mundhra, had filed an affidavit wherein, the dilapidated condition of the building in question and the need to demolish the same for reconstruction, was highlighted and an undertaking was recorded to the following effect:-

“It is a fact that the respondent no. 7 herein assures the writ petitioners herein to the extent that the respondent no. 7 would provide the required spaces to the writ petitioners herein as soon as the respondent no. 7 would complete the newly constructed building over the said premises provided further the respondent no. 7 would get the completion certificate regarding construction

of newly building over the said premises from the competent authority of the respondent Kolkata Municipal Corporation.

That the respondent no. 7 are giving an undertaking to the effect that the writ petitioners would get the same and in terms of Square feet as they are rightly enjoying over the said premises in question after getting approval from the respondent Kolkata Municipal Corporation relating to completion certificate of the newly built building over the said premises in accordance with the necessary Building Rules of the Kolkata Municipal Corporation Act, 1980.”

5. Alleging violation of the order dated October 19, 2021, Arti filed a contempt application against the Directors of Anndata being CC/58/2021. The contempt application was disposed of by the learned Single Judge by an order dated January 31, 2022. APOT 112 of 2022 is an appeal filed by Arti against the said order dated January 31, 2022.

6. Subsequently, Anndata filed a contempt application being CC 19 of 2022 against Arti for alleged violation of the order dated January 31, 2022, passed on Arti’s contempt application. An order dated June 14, 2022, was passed on such application which is the subject matter of challenge in APOT 111 of 2022.

In re: A.P.O.T No. 112 of 2022

7. We have taken up this appeal first, since it is directed against an order which is earlier in point of time.

8. As noted above, the order appealed against was passed on January 31, 2022, on a contempt application filed by the present appellant alleging violation of the order dated October 19, 2021, passed on GA No. 1 of 2021 filed in W.P.O no. 577 of 2017. The impugned judgment and order in effect, makes an interim arrangement for the present appellant to shift to an

alternative accommodation, the rent whereof would be substantially borne by Anndata, to enable and facilitate demolition and reconstruction of the building in a portion whereof Arti resides as tenant.

9. The salient directions in the order impugned are as follows:

- (i) By February 15, 2022, Anndata shall make over to Arti current account payee cheque (s) to the tune of Rs. 1,50,500/-.
- (ii) Within February 15, 2022, Anndata shall also handover post dated cheques to the tune of Rs. 50, 000/- per month to cover part of the petitioner's rent for the temporary alternative accommodation for the period of May, 2022 till December, 2024.
- (iii) Upon the said cheques being handed over, Arti shall shift from her existing residence to her new temporary accommodation and hand over vacant possession of the current accommodation to Anndata, positively by February 28, 2022.
- (iv) Anndata shall make full endeavour to complete the new construction within December, 2024 and re-accommodate Arti in the newly constructed building. The space to be handed over to Arti in the new building would be commensurate with the size and standard of her current accommodation.
- (v) If the new reconstructed accommodation is handed over to Arti before the Month of December, 2024, she will return the balance number of post dated cheques then remaining outstanding, to Anndata.
- (vi) This arrangement would be without prejudice to the rights and contention of the parties in the main writ petition.

10. From the tenor of the aforesaid order it would appear that the same was passed with the tacit consent of the parties although such consent was

not recorded explicitly. In any event, we find absolutely no infirmity in the order under appeal. The order is on extremely reasonable, workable and practical order. We are told that in terms of the said order the cheques were made over by Anndata and /or on its behalf to Arti and several of such cheques have been encashed by Arti. Arti should honour her obligation under the impugned order by handing over vacant possession of the portions in her occupation, to Anndata, for the purpose of demolition and reconstruction of the building in question. In our view, there is nothing wrong with the impugned order. None of the grounds in the memorandum of appeal impresses us.

11. At the time of hearing, an apprehension was expressed on behalf of Arti that before she hands over possession of the tenanted portion to Anndata, it should first be ascertained as to how much area is in her occupation as otherwise, there could be future complications regarding putting her back in possession of an equivalent area in the reconstructed building. By an order dated July 20, 2022, we had appointed a surveyor from the panel of surveyors maintained by this Court. The relevant portion of the said order reads as follows:-

“We appoint Sri Chandan Ghosh, Mobile : 9830834900/ 9477902086/ 8961621995 from the panel of Surveyors maintained by the High Court, to inspect the second and fourth floors of the building in question and record the area of the same in the presence of the representatives of the appellant and the owner. The surveyor shall also take into account the municipal records pertaining to the premises in question and the tenancy of the appellant. The surveyor shall serve at least 48 hours’ notice on the owner and the appellant prior to visiting the building in question.

The surveyor shall be entitled to take such assistance as may be necessary for measuring the portion of the building in question in the occupation of the appellant. He shall file a report clearly indicating the precise area under the occupation of the appellant in the building in question and any other relevant facts that he may deem fit and proper. The surveyor shall be entitled to an initial remuneration of Rs. 50,000/- to be shared equally by the parties at the first instance.

The KMC shall render all assistance to be surveyor and shall forthwith produce all records that the surveyor may call for to enable the surveyor to carry out this order.”

12. Pursuant to the said order, the surveyor conducted local inspection and has filed a report which is on record.

13. We are really at a loss to understand as to why Arti is aggrieved by the order assailed in this appeal.

14. The order amounts to an *ad-hoc* interim arrangement without prejudice to the rights and contentions of the parties in the pending writ petition. In our view, the learned Judge beautifully balanced the equities. It appears that the building in question requires demolition and reconstruction. Hence, Arti must vacate the tenanted portion she presently occupies to facilitate demolition and reconstruction of the building. The learned Judge has also been careful to ensure that Arti is substantially compensated for any inconvenience she may suffer or monetary burden that may come upon her for temporarily living in alternative accommodation. The learned Judge has also ensured that Arti will be put back in possession of an equal area which she now occupies, in the reconstructed building.

15. We see no reason to interfere with the order under appeal. APOT 112 is accordingly dismissed.

In re: A.P.O.T No. 111 of 2022

16. As noted above Anndata filed an application against Arti for alleged violation of the order dated January 31, 2022. Such application, being CC 19 of 2022, was disposed of by an order dated June 14, 2022, which is under challenge in this appeal at the instance of Arti.

17. We have already noted the salient directions in the order dated January 31, 2022.

18. In the contempt application Anndata complained that despite encashing several of the post dated cheques handed over to Arti in terms of the order dated January 31, 2022, she has failed, neglected and refused to vacate the tenanted premises. It was contended on behalf of Arti that in her understanding the order requiring her to vacate the tenanted premises pertained to only the 2nd floor of the building in question and did not encompass the portion in her occupation on the 4th floor of the building.

19. The learned Judge passed the impugned order observing, inter alia as follows:-

“It is evident from observations galore in the order under contempt that the tenor thereof was that the alleged contemnors should, upon receiving the amount of money directed to be paid by the petitioner, vacate the entire building, i.e., the portions thereof which are in their accommodation, and hand over the same peacefully to the present petitioner. Thereafter, upon completion of the construction of the new building after demolition of the existing building, including all the floors thereof, the petitioner shall hand over accommodation to the alleged contemnors in the

new building commensurate with the previous accommodation of the alleged contemnors. As such, it is evident from the materials on record that the alleged contemnors are deliberately protracting the matter on one frivolous pretext after the other, thereby taking advantage of the payments made by the petitioner, at least a major portion thereof, but thereafter resiling to honour their part of the commitment of vacating the premises in favour of the petitioner.

Such conduct on the part of the alleged contemnors borders on contempt and there is no reason why the petitioner (**sic**) shall not be committed for deliberate and willful violation of the Court's order. However, since contempt is an extreme measure, as a last chance to the alleged contemnors, an opportunity is given to the alleged contemnors to hand over the entire premises i.e., the entire portion of the same at 138, Utkal Moni Gopa Bandh Sarani, Kolkata – 700007 under their occupation, in terms of the order dated October 19, 2021.

In the event such possession is handed over by the alleged contemnors to the petitioner and/or their men and agents before the next returnable date, the deliberate contumacious act of the alleged contemnors might be considered with lenience. However, it is made clear that in the event the alleged contemnors violate the order repeatedly, there will be no other option left before this Court but to take appropriate measures for contempt of Court.

The matter shall next be enlisted on June 21, 2022 for passing further orders, when learned Counsel shall intimate the Court as regards whether the order of the Court has been complied with by the alleged contemnors in the meantime or not.”

20. We completely endorse the view of the learned Single Judge. It is obvious that having received substantial benefits in the form of money from Anndata and/or on its behalf, in terms of Court's order, Arti is now trying to resile from her obligation to vacate the entire tenanted portion which she occupies in the building in question, both on the 2nd floor and the 4th floor.

21. We are not impressed with any of the grounds enumerated in the Memorandum of Appeal which are all flimsy and frivolous.

22. It was submitted before us on behalf of Arti that she was under the *bona fide* impression that under the order dated January 31, 2022, she was required to vacate only the 2nd floor portion in her occupation and not the 4th floor portion. We find this difficult to believe. The arrangement delineated by the learned Single Judge in the order dated January 31, 2022, leaves no room for such confusion. There is no ambiguity or lack of clarity in the order. In any event, now that the learned Judge has sufficiently clarified the position in the order impugned in this appeal, and that the learned Judge has given a last opportunity to Arti to comply with the order dated January 31, 2022, and to honour her obligation under the said order, we find no reason to interfere with the order of the learned Single Judge. We have doubt about the *bona fides* of the appellant because of her conduct.

23. In the result both the appeals and the connected applications are dismissed as being completely meritless and frivolous with costs assessed at Rs. 10,000/- to be paid by the appellant to the West Bengal State Legal Services Authority, within a fortnight from date. A copy of this order shall be forwarded by the Department to the member Secretary of West Bengal State Legal Services Authority who will draw to our attention failure, if any, on the part of the appellant to pay the costs as directed above.

24. Urgent certified website copies of this judgment, if applied for, be supplied to the parties subject to compliance with all the requisite formalities.

I agree.

(Apurba Sinha Ray, J.)

(Arijit Banerjee, J.)