

OD-9

IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
ORIGINAL SIDE

APOT/158/2022
with
EC/171/2014
IA No.GA/1/2022

SOMESH CHANDRA BHATTACHARYYA
-VERSUS-
PROSUN KUMAR BHATTACHARYYA AND ORS.

BEFORE:

The Hon'ble JUSTICE HARISH TANDON

AND

The Hon'ble JUSTICE PRASENJIT BISWAS

Date : 8th September, 2022.

Appearance:

Mr. Deep Narayan Mukherjee, Adv.

Mr. Debayan Ghosh, Adv.

...for the appellant.

Mr. Shaunak Ghosh, Adv.

Mr. Jonardhan Mandal, Adv.

...for the respondent nos.2(b) to 2(c).

Mr. Pratik Bhattacharya, Adv.

...for the respondent no.1(b).

Mr. Smaraj Shaw, Adv.

...for the respondent no.1(c).

The Court : The order impugned in the instant appeal does not reveal that there is any decision taken by the trial court. A point of maintainability was raised by some of the defendants which has been seriously disputed by the decree-holder and the same is kept open and to be decided on the dates so fixed. It appears from the impugned order that the trial court has fixed the next date for hearing of the application including the plea of

maintainability of the execution proceedings. The Court did not have an occasion to decide the issue or the points and postponed the consideration thereof at the fixed date. Such an innocuous order does not come within the purview of the case decided nor can be termed to be prejudicial to the interest of either of the parties. An attempt is made by filing the instant appeal so that the appellate court decides the plea of maintainability instead of the executing Court where the application is pending and such point has been kept open.

We, thus, dismiss the appeal. It is, however, made clear that all the points available to the appellant as canvassed here if raised before the trial court shall be decided independently on its merit.

[HARISH TANDON, J.]

[PRASENJIT BISWAS, J.]