

**IN THE HIGH COURT AT CALCUTTA**  
**Civil Appellate Jurisdiction**  
**APPELLATE SIDE**

Present:

**The Hon'ble Justice Tapabrata Chakraborty**  
**&**  
**The Hon'ble Justice Partha Sarathi Chatterjee**

**FA 131 of 2017**

**Shyamal Kumar Roy**  
**versus**  
**Sushil Kumar Agarwal**

*For the Appellant* : *Mr. Tapash Kumar Bhattacharya,*  
*Mr. Aviroop Bhattacharya,*  
*Mr. Bishnu Prosad Singha Roy.*

*For the Respondent* : *Mr. Shuvanil Sen Gupta,*  
*Mr. Debdut Mukherjee.*

*Hearing is concluded on* : *31<sup>st</sup> January, 2023.*

**Judgment On** : **15<sup>th</sup> February, 2023.**

**Partha Sarathi Chatterjee, J.**

**Preface :**

1. The present appeal preferred at the instance of defendant/appellant is directed against the judgment and decree dated 15<sup>th</sup> June, 2016 passed by the learned Civil Judge (Senior Division), Second Court at Barasat, 24 parganas (North) in Title Suit no. 04 of 1999 whereby the suit for specific

performance of contract and permanent injunction instituted by the developer against the owner was decreed.

**Plaintiff/Respondent's Case :**

2. Facts epitomized in the plaint presented by the plaintiff/respondent/developer (in short, developer), in brief, are as follows :

- i. That on 16.1.1995, owner of the premises No. P-173, Block B, P.S. – Lake Town, Kolkata-89 (hereinafter referred to as the suit property) entered into a development-agreement with the developer for construction of a four storied building thereon and parties to the agreement covenanted that within four months from the date of execution thereof, owner shall get plan sanctioned from South Dum Dum Municipality at his own costs and hand over the sanctioned plan to the developer and in case, within a period of four months from that date or any other extended time for another two months, the plans are not sanctioned due to any reason whatsoever, the developer shall be at liberty to demolish the entire building and to submit new building plan and in that event the owner shall get 40% of the constructed area and the developer shall get balance 60% of constructed area;
- ii. It was expressly agreed and/or understood that with effect from the date of execution of agreement and at all times during subsistence of the agreement, the developer shall have full and free and unfettered access into and out of the said premises;

- iii. Developer shall pay Rs.7 (seven) lakhs to the owner as monetary consideration, out of which Rs.3,31,000/- was to be paid on the date of execution, Rs.51,000/- at time of handing over the sanctioned plan and rest Rs.3,18,000/- would be paid simultaneously with the delivery of possession by the developer to his nominee/nominees and/or purchaser, as the case may be, without payment of the said sum to the owner;
- iv. Developer covenanted that construction shall be completed and he shall make the same tenantable and shall hand over possession within 12 months from the date of obtaining and delivering sanctioned plan and vacating and delivering possession of the premises;
- v. It was agreed by and between the parties that owner shall get ground floor with one car parking space and the first floor as his allocation whereas developer's allocation would be second and third floor of the building;
- vi. It was claimed therein that plaintiff-developer paid Rs.3,31,000/- on the date of execution of agreement and then, from time to time he paid Rs.4,50,000/- to the owner till date;
- vii. That the defendant being the owner submitted modified plan on repetitive occasions and submitted plan for getting sanctioned five times i.e. on 13.2.1995, 5.3.1995, 29.3.95, 11.4.95 and 22.5.95 before the competent authority and lastly, on 22.9.1995, sanctioned plan was handed over to the plaintiff

and possession of the premises was handed over after Diwali of that year. In the result, there had been a delay of more than two months;

- viii. That the developer started construction diligently and in the month of January, 1996 he completed construction of ground and first floor of the building and even handed over possession to the owner;
- ix. That taking possession of ground and first floor, i.e. his own allocation, owner started creating disturbance in the way to early completion of the rest construction i.e. developer's allocation. The owner off and on put padlock on the storeroom and denied access of the plaintiff and his workers to the suit premises. Lastly on 24.10.96, the developer was prevented from entering the premises and from storing building materials and hence, developer was constrained to lodge one diary with local P.S. which was registered as GDE no. 1007 of 1996 dated 24.10.96;
- x. That in the meantime, by giving one letter dated 3.10.1996, owner asked the developer to start construction within seven days from the date of receipt thereof and to complete construction within three months;
- xi. The developer responded to that letter by his letter dated 14.10.1996 wherein he mentioned that due to non-cooperation on the part of the owner, the rest part of the construction could

not be completed and one instance was cited that on 11<sup>th</sup> October, 1996 the owner refused to hand over key of the go-down and prevented the developer from storing the building materials and the owner also did not allow the electricians to do their job. By the letter dated 14.10.1996 cooperation from the owner was solicited but in vain;

- xii. That then by one letter dated 18.10.1996, suddenly, the owner terminated the contract;
- xiii. That on 4.11.1996, developer lodged one complaint with the local P.S. and on 8.11.1996, developer gave a notice to the owner asking him to allow him to make construction and the owner replied to that notice dated 8.11.1996 by giving two letters dated 11.11.96 and 14.11.96. The developer gave a further notice on 3.12.1996 to which the owner responded on 12.12.1996;
- xiv. That in 1997, developer filed a suit *vide*. Title Suit no. 14 of 1997 for declaration and injunction and on 17.3.97, his application for interim injunction was turned down and hence, order dated 17.3.1997 was assailed in Misc. appeal no. 66 of 1997 and by an order dated 29.11.97, order passed by the learned trial court on 17.3.1997 was set aside and by passing an order of injunction, respondent therein being the owner was restrained from creating any obstruction and interference in the development and construction work in the suit premises and

owner was also restrained from alienating the suit property to third party in violation of the terms of the agreement till the disposal of the suit;

- xv. That the owner impugned the order dated 29.11.97 before the Hon'ble High Court at Calcutta in C.O. no. 3270 of 1997 which was allowed by an order dated 25.9.98 and order dated 29.11.1997 was set aside;
- xvi. That on 4.1.99, Title Suit no. 14 of 1997 was withdrawn with liberty to file afresh on the self-same cause of action and on 8.1.99, the suit *vide*. Title Suit no.04 of 1999 was filed.

**Defendant/Appellant's Case :**

3. Defendant/appellant/owner (in short, owner) resisted the suit by filing written statement wherein denying all the averments made in the plaint, it was specifically contended as follows :

- i. That the terms and conditions of the agreement dated 16.1.1995 are not binding upon the defendant since the same had been cancelled;
- ii. That the plaintiff had never requested the defendant to allow him to complete the remaining work of construction;
- iii. That on 22.9.1995, plaintiff received the sanctioned plan without any objection and plaintiff was to complete the construction within 12 months from the date being 22.9.1995 i.e. within 21.9.1996 but he failed and neglected to complete the construction within the time stipulated in the agreement;

- iv. On 14.2.1996, plaintiff stopped construction work and finally left the site on 16.5.1996 and he took away all the building materials from the site;
- v. That on 03.10.96, the defendant by giving a letter requested the plaintiff to start construction work and then, lastly by one letter dated 18.10.96, defendant cancelled the agreement;
- vi. That the plaintiff paid only Rs.4,15,000/- on diverse dates out of Rs.7,00,000/-;
- vii. That suit for specific performance of contract cannot lie in like case since compensation would be the adequate remedy for breach of such contract;
- viii. That the allegation contained in the notice of the plaintiff dated 14.10.96 had no legs to stand in view of the conduct and performance of the plaintiff and it was claimed that defendant completed finishing work of 1<sup>st</sup> floor;
- ix. That the suit is barred by limitation and is hit by the provisions of Order 2 Rule 2 of the CPC;
- x. That in the agreement, there was an arbitration clause (clause - 26) and hence, the suit is not maintainable.

**Case – record :**

4. Record postulates that in corroboration of the fact depicted in the plaint, plaintiff adduced oral testimonies of four witnesses including himself, who were examined as PW-1 to 4 and plaintiff tendered some documents which were admitted in evidence and marked as Ext.1 to 22. On the other

hand, to lent support to the contents of written statement, defendant produced oral accounts of three witnesses including himself, who were examined as DW-1 to DW-3 and documents produced by the defendant were marked as Ext.-A to O.

5. As has been stated earlier, learned court below decreed the suit and directed the defendant to give free access to the plaintiff into the suit property so that plaintiff can complete rest portion of the construction and defendant was restrained from creating any obstruction to the plaintiff in completion of the construction.

**Grounds of appeal :**

6. Aggrieved thereby, the present appeal has been preferred contending, *inter alia*, that the learned court below failed to consider that it was not the plaintiff but the defendant who was ready and willing to perform his part of the contract and plaintiff was under obligation to complete entire construction and deliver possession of owner's allocation within 12 months from the date of receipt of sanctioned plan and delivery of possession of the site and plaintiff only tried to store building materials in the premises on 24.12.1996 i.e. long after one year from the date of agreement and learned court below did not consider that suit was barred by limitation as well as by the provisions of Section 8 of Arbitration and Conciliation Act, 1996 and such point was raised in written statement and learned court committed mistake in passing the decree.

### **Submission of Appellant :**

7. Mr. Bhattacharya, learned advocate appearing for the appellant i.e. the owner argued the matter at length. Crux of his argument is that suit is barred by the provisions of Section 8 of the Arbitration & Conciliation Act, 1996 (hereinafter referred to as the Act of 1996) and suit was barred by limitation and it would be preposterous to say that since the court granted leave to file a fresh suit, court condoned the delay. He asserted that delay in filing any suit cannot be condoned. He submitted that question of limitation is a question of jurisdiction also and since, suit was barred by limitation, the learned court below lost its jurisdiction to entertain the suit.

8. He vociferously submitted that suit for specific performance of contract instituted by developer is barred in view of Section 14(3)(c) of the Specific Relief Act.

9. He added that the suit was barred under Order 2 Rule 2 CPC. He asserted that in the given case, plaintiff failed to complete the construction within 12 months and time was the essence of the contract and hence, the agreement was rightly cancelled and he stated that plaintiff cannot get any relief in such framing of suit. He prayed for setting aside of judgment and decree.

10. In support of his contention, he placed reliance upon the judgments delivered in the cases of *Urvashi Aggarwal (since deceased) thr. Lrs & Anr. -vs- kushagr Ansal (successor-in-interest of Erstwhile Def. no. 1 Mrs. Suraj Kumari) And Ors.* reported in AIR 2019 SC 1280, *K. S. Vidyanadam & Ors. -vs- Vairavan* reported in (1997) 3 SCC 1, *Sushil Kumar*

*Agarwal –vs- Kalidas Sadhu* reported in 2009(2) CHN 650, *K. Kallaiah –vs- Ningegowda* reported in AIR 1982 Kar 93, *Coffee Board –vs- Ramesh Exports Private Ltd.* reported in (2014)6 SCC 424, *Lachhman Singh (deceased) thr. Lrs. & Ors. –vs- Hazara Singh (deceased) thr. Lrs. & Ors.* reported in (2008) 5 SCC 444.

**Submission of respondent :**

11. *Per contra*, Mr. Senguta, learned advocate representing the respondent strenuously contended that the appellant did not file any application under Section 8 of the 1996 Act before submission of his written statement and hence, it shall be deemed that appellant had waived such arbitration clause and in support of such contention, he relied upon a judgment of *Lindsay International Pvt. Ltd. & Ors. –vs- Laxmi Niwas Mittal & Ors.* reported in AIR 2021 Cal 24.

12. He further argued that Article 54 of the Limitation Act lays down that for specific performance of contract, the period of limitation is three years from the date fixed for performance and where no such date is fixed, the date from which the plaintiff had notice that performance was refused. He submitted that by using the words '*from the date fixed for performance*', legislature wanted to mean that such date would be a specific date like 31<sup>st</sup> March etc. and here no date was so fixed and hence, period of limitation begins to run from the date of refusal i.e. from the date of termination of contract i.e. from 18.10.1996 and the second suit was filed on 8.1.1999 which is well within the period of limitation. In support of such contention, he placed reliance upon the judgment of *Madina Begum & Anr. –vs- Shiv*

*murti Prasad Pandey & Anr.* reported in (2016) 15 SCC 322 and *T. L. Muddkrishana & Anr. –vs- Lalitha Ramchandra Rao (Smt.)* reported in (1997) 2 SCC 611.

13. He added that Order 2 Rule 2 of the CPC applies where plaintiff being entitled to any relief omits to claim such relief or omits to include any claim in previous suit, he shall not be able to make such claim or pray for such relief in subsequent suit but here, first suit was withdrawn and taking liberty from the court, second suit was filed and hence, there is no applicability of Order 2 Rule 2 CPC.

14. He arduously argued that the present agreement is not a building contract *simpliciter*. Here, interest of the developer was created by the owner in respect of constructed area and hence, such suit is not barred by Section 14(3)(c) of Act of 1963 and in support of such contention, he placed reliance upon the judgment of Full Bench decision of this court rendered in cases of *Ashok Kumar Jaiswal –vs- Ashim Kumar Kar*, reported in AIR 2014 Cal 92 and the judgment delivered in the case of *Sushil Kr. Agarwal –vs- Meenakshi Sadhu* reported in (2019)1 CHN (SC) 6.

15. He submitted whether time is essence of contract or not shall be question of intention of parties to be gathered from the terms of the contract and from the conduct of the parties. He added that there was a delay of almost 9 months in handing over sanctioned plan and in delivery of possession of site but the plaintiff did not raise any objection and he has waived the right accrued on such delay and even, defendant himself extended time by giving letter dated 3.10.96. In view thereof, time was not

essence of contract. In support of such contention he relied upon a judgment of *Hind Construction Contractors By Its Sole Proprietor Bhikam Chand Mulchand Jain (Dead) By Lrs. -vs- State of Maharashtra* reported in (1979) 2 SCC 70.

16. He invited the attention of the court to the conduct of the defendant being the owner by saying that owner had accepted Rs.4.5 lakhs out of 7 (seven) lakhs and he took delivery of his allocation i.e. ground floor, 1<sup>st</sup> floor and one car parking space within the time stipulated and from his evidence, it would be apparent that after taking possession of the constructed area, he started creating obstruction to the developer in completion of construction of part of developer's allocation and raised the plea that construction has not been completed within the time stipulated and the owner has grabbed the entire suit property.

17. He asserted that the learned court below has rightly exercised its equitable jurisdiction and decreed the suit keeping no scope to interfere with the same. He prays for dismissal of the appeal.

**Observation of the Court :**

18. Upon scrutiny of the pleadings and arguments advanced by the parties, it transpires that we are entrusted with the job to answer the following queries :

1. Whether suit is barred in view of the arbitration clause embodied in the agreement ?
2. Whether the subsequent suit is barred in view of the provisions of Order 2 Rule 2 of CPC ?

3. Whether the suit is barred by limitation ?
4. Whether the suit is barred in view of Section 14(3)(c) of Specific Relief Act, 1963 ?
5. Whether in the given facts and circumstances, the learned court below has erred in decreeing the suit ?

**Answer to Query no. 1.**

19. Admittedly, in clause 26 of the agreement dated 16.1.1995, there was an arbitration clause which is extracted below :

*'All the disputes and difference in any manners relating to and/or arising out of the provisions herein contained shall be referred to the Arbitration of such person as be nominated by the parties hereto by mutual consent and the award of such arbitrator may be final and binding on the parties hereto. Such Arbitration shall otherwise be in accordance with the Indian Arbitration Act, 1940 as modified from time to time.'*

20. Undisputedly, both under Section 34 of Act of 1940 or under Section 8 of Act of 1996, party or parties to the agreement has and/or have to apply for reference not later than the date of submitting his/their first statement on the substance of the dispute before the court.

21. Owner being the defendant did not make any such application before filing his written statement in the learned court below although in written statement such plea was taken.

22. There are repetitive judgments on the score that there is difference between the expressions being *'first statement on the substance of the*

*dispute*’ and *‘written statement*’ and legislative intent is that such application is to be applied at the earliest. If a party to an agreement having arbitration clause does not make such application seeking reference to arbitration, it shall be deemed that he has subjected himself to jurisdiction of the court and waived his right to get the disputes arbitrated. [See the judgment delivered in the case of *Lindsay Int’l Pvt. Ltd. & Ors. (supra)*].

23. In the case at hand, no such application has been made by the owner seeking reference to arbitration and hence, it shall be deemed that owner has waived such right.

**Answer to Query no. 2.**

24. To answer this query it would be useful to revisit the provisions of Order 2 Rule 2 CPC which read thus :

*‘Order 2 Rule 2 CPC : Suit to include the whole claim.- (1) Every suit shall include the whole of the claim which the plaintiff is entitled to make in respect of the cause of action; but a plaintiff may relinquish any portion of his claim in order to bring the suit within the jurisdiction of any court.*

*(2) Relinquishment of part of claim.- Where a plaintiff omits to sue in respect of, or intentionally relinquishes, any portion of his claim, he shall not afterwards sue in respect of the portion so omitted or relinquished.*

*(3) Omission to sue for one of several reliefs- A person entitled to more than one relief in respect of the same cause of action may sue for all or any of such reliefs; but if he omits, except with the leave of the Court, to sue for all such reliefs, he shall not afterwards sue for any relief so omitted.’*

25. Order 2 Rule 2, like the principle of *res judicata*, is based on salutary principle that all disputes must be settled once and for all and no person should be vexed twice. If a plaintiff is entitled to several reliefs against the defendant in respect of same cause of action, he cannot spilt up those reliefs and he is not permitted to make any claim in subsequent suit if he omits to claim the same in earlier suit.

26. The provisions of Order 2 Rule 2 CPC bar the plaintiff to get the remedy and hence, such provision is to be construed strictly. In the case at hand, suit was withdrawn under Order 23 Rule 1(3) with liberty to institute a fresh suit in respect of self-same cause of action and in respect of same claim. Since first suit was withdrawn with liberty to file afresh on the self same cause of action, bar under Order 2 Rule 2 CPC will not apply and in this regard, it would be useful to refer to the judgment of three judges' bench passed in case of *Gurinderpal -vs- Jagmittar Singh* reported in (2004) 11 SCC 219 where initially, suit for permanent injunction was withdrawn taking leave under Order 23 Rule 1(3) and then second suit was filed seeking specific performance with alternative prayer for refund of consideration of money. The Hon'ble Apex Court held that suit was not barred under Order 2 Rule 2 CPC.

### **Answer to query no. 3**

27. Placing reliance upon the judgment of *T.L. Muddukrishana & Anr (supra)*, Mr. Bhattacharya submitted that when the date is fixed for performance, time begins to run from that date and for that purpose whether time was the essence or not would be of no relevance.

28. Mr. Bhattacharya's assertion is that in the given case, time to complete the construction was 21.9.1996 and although, the first suit was filed in 1997, the same was not for specific performance of contract and then taking leave from the court, in 1999, second suit being suit for specific performance of contract was filed on 8.1.1999, which is barred by limitation and court while granting leave cannot condone the delay in filing the suit.

29. Under Article 54 of the Limitation Act, 1963 a suit for specific performance of contract is to be filed within a period of three years from the date fixed for the performance of the contract or if no such date is fixed, the date from which the plaintiff has notice that performance is refused.

30. In case of *Madina Begum & Anr. (supra)*, it was ruled that the expression '*Date fixed*' for specific performance of contract in Article 54 means specific date in calendar and where no date is fixed, then 2<sup>nd</sup> part of Article 54 will apply. In this case, period for performance was fixed '*within the period of six months*'. It was held that since no specified date in the calendar had been fixed, 2<sup>nd</sup> part of the Article would be applicable.

31. So, in the case at hand, time begins to run from 18.10.1996 i.e. from the date of repudiation of the contract by the owner and second suit was filed on 8.1.1999. So, we have no qualm to hold that the learned court below did not err in holding the suit was not barred by limitation. Even if for the sake of argument, it is assumed that time begins to run from 22.9.1996 (date, according to owner, is fixed for completion of construction), then also the suit was filed within the period of limitation. Hence, query no. 3 is answered in favour of the respondent herein.

**Answer to query no. 4.**

32. The query as to whether suit for specific performance of contract can be maintained at the behest of the builder against the owner is no more *res integra*. In case of *Sushil Kr. Agarwal –vs- Meenakshi Sadhu (supra)*, considering the Special Bench Judgment of High Court at Calcutta (AIR 2014 Cal 92) and other related judgments, the Hon'ble Supreme Court endorsed the view of the High Court at Calcutta that in case where one interest in the constructed area has been created in favour of the developer in the development agreement, suit for specific performance of contract by the builder and/or developer against the owner can be maintained.

33. In the given case, in the subject agreement, it was covenanted that upon completion of agreement, owner shall get ground floor and 1<sup>st</sup> floor and one car parking space whereas the developer shall get 2<sup>nd</sup> and 3<sup>rd</sup> floor. So, it is apparent that in the agreement, a share and/or interest was created in favour of the developer. Hence, it is not a building contract *simpliciter*. So, we are of the view that the learned court has rightly held that suit is not barred in view Section 14(3)(c) of Act of 1963.

**Answer to query no. 5 :**

34. Undoubtedly, jurisdiction to refuse or grant relief in suit for specific performance of contract is discretionary and court is not bound to grant relief merely because it is lawful to do so. It is to be noted that such discretion has to be exercised judiciously and not arbitrarily or capriciously. It is well settled proposition of law that conduct of the parties plays important role in the matter of exercise of discretionary jurisdiction by a

Court of law and intention of the parties can be gathered from the conduct of the parties. Person coming to court with pair of dirty hands cannot claim equity from the court and court shall exercise such discretion considering totality of facts and circumstances.

35. In the given case, parties entered into an agreement on 16.1.1995 and it was agreed that within four months, owner shall hand over the sanctioned plan and deliver the possession of site to the developer and such time can be extended for two months and parties covenanted that if plans are not sanctioned due to any reason whatsoever, the developer shall be at liberty to demolish the entire building and to submit new building plan and in that event the owner shall get 40% of the constructed area and the developer shall get balance 60% of constructed area.

36. In the given case, owner modified the plan on repeated occasions and ultimately, he got the plan sanctioned on 22.9.1995 and plaintiff/developer claimed that possession of site was delivered after Diwali and owner rebuffed such claim but could not mention any date on which possession thereof was given. So, it is apparent that although there was delay in handing the sanctioned plan and in delivery of possession of site, developer did not take advantage of default clause.

37. Mere fixation of time for performance in the contract will not lead the court to hold that time was the essence of contract. Answer to the query as to whether time was the essence of contract shall be gathered from the conduct of the parties and in the case at hand, from such conduct of the both the parties to the contract, it seems that although in the contract, it

was agreed that within 12 months from the date of delivery of sanctioned plan and possession of site construction was to be completed but the parties did not treat that time would be the essence of contract.

38. In the given case, owner has taken more 4(four) lakhs from the plaintiff/developer but he did not disclose such facts in written statement. Owner has taken possession of the portion of his allocation within the time stipulated in the contract. Then, suddenly on 3.10.1996, he gave letter giving 7 days' time to the developer to commence construction and on 14.10.1996 by giving reply, developer stated that due to non-cooperation and obstruction from the end of the owner, he could not complete construction within the stipulated time and then on 18.10.1996 i.e. within fifteen days from the date of issuance of the letter dated 3.10.96, he unilaterally terminated the contract.

39. Owner himself in his deposition admitted that he covenanted to give free access to the site to the developer for completion of construction but developer made allegation that owner did not give free access to the site to him. The developer's employees were also not allowed to store building materials in the go-down. In his deposition, the owner stated he gave vacant possession of entire premises to the plaintiff and then said he only gave vacant possession of only 2 rooms on the first floor to the developer.

40. Although the owner terminated the contract yet he did not feel it necessary to refund the money to the developer. He has been enjoying the portion of his allocation and has been running business therein. It thus appears that on one hand the owner on various pretext obstructed the

developer from completing the remaining part of construction and on the other hand raised a plea that he had suffered pecuniary loss and thereafter abruptly terminated the contract with a *mala fide* attitude only to grab the entire property.

**Conclusion :**

41. So, basing upon the observations made hereinabove, we are of the considered view that the learned court below has rightly held that suit is not barred either in view of Article 54 of limitation or in view of any provision of Arbitration Act, 1940 or Order 2 Rule 2 of the CPC or in view of Section 14(3)(c) of Specific Relief Act, 1963 and on consideration of entire conduct of the owner and taking the totality of facts and circumstances into account, we have no hesitation to hold that the learned court below did not err in exercising its equitable discretion in favour of the plaintiff and we do not find any infirmity, irregularity and impropriety in the approach and decision of the learned court below.

**Order :**

42. Consequently, the appeal be and the same is dismissed, however, without any order as to the costs. The judgment and decree impugned herein are affirmed.

43. The parties would be at liberty to take back the amount, if any deposited in the court.

44. Let a decree be drawn up accordingly.

45. Let a copy of the judgment and LCR, if called for be sent down to the learned court below forthwith.

46. Urgent Photostat copy of this judgment, if applied for, shall be granted to the parties as expeditiously as possible, upon compliance of all formalities.

**(Partha Sarathi Chatterjee, J.)**

**(Tapabrata Chakraborty, J.)**

**Later**

After delivery of judgment, the learned advocate representing the appellant prays for stay of operation of the judgment.

Such prayer is considered and rejected.

**(Partha Sarathi Chatterjee, J.)**

**(Tapabrata Chakraborty, J.)**