

09-08-2023
ct no. 13
sl. no. 2
sp

F.A. No. 242 of 2007

Partha Sarathi Ghosh since deceased represented by
Piklu Ghosh & Anr.

-Versus-

Smt. Tapati Dutta & Anr.

Mr. Bratin Kumar Dey,
Ms. Anjana Banerjee

...for the appellants

Mr. Sambhunath Ray,
Ms. Amrita Tewari,
Ms. Tuhina Parvin

...for the respondent no. 1

Mr. Tapan Coomar Dey,
Ms. Shreya Chatterjee

..for the respondent no. 2

1. The learned counsel for the appellants has obtained instructions and has agrees that if the interest payable on the principal sum of Rs. 1,40,000/- is granted from the 10th March, 1993, @ 8% simple interest per annum, his client shall not press any other claim in the appeal.
2. Learned counsel appearing for the respondent no. 1, Mr. Sambhunath Ray, submits that although he cannot record any formal consent of his client, his client accepts the offer of the appellants.
3. This Court has very carefully considered the judgement impugned and is in complete

agreement with the observations of the Court below to the extent that it has found as follows,

The whole act of the defendant No. 1 incurs wrath of the Court. The defendant has obtained the possession over the suit property and at present enjoying the same. This court in an unambiguous language does not appreciate the act of the defendant No. 1. The plaintiff has already paid a sum of Rs. 1.40 lakhs to the defendant No. 1. At the same time the defendant No. 1 has also received the full consideration money from the defendant No. 2 and delivered possession to him. Not only that the defendant No. 1 submitted in a letter written to the banker of the defendant No. 2 that the suit property is free from encumbrances having full knowledge of the affair of the suit and disputes with her with the plaintiff. She is bound to refund the said money, which she has taken from the plaintiff and her claim for adjustment of the same with her assessed damages is not at all tenable and has got no foot to stand.

4. However, after hearing the parties and considering the entire material on record, this Court is of the view that the principal sum paid by the appellants to the respondent no. 1, i.e., a sum of Rs. 1.40 lakhs should be repaid by the respondent no. 1 to the appellants, together with simple interest @ 8% per annum from March 10, 1993.
5. This Court is conscious of the fact that the said sum of Rs. 1.40 lacs was originally paid in 5 instalments over a period of time. However, the flat rate of interest @ 8% per annum, without any variation from the first payment shall also cover and include the appellants' claim. Hence, this Court is inclined to direct such payment at

the said rate of interest from the date of first payment made by the respondent no. 1.

6. The costs, as awarded by the Court below, shall also be payable by the respondent no. 1 to the appellants. The decree impugned shall stand modified to the extent indicated hereinabove.
7. The respondent no. 1 shall pay the aforesaid sum as directed (Rs. 1.40 lacs, together with simple interest @ 8% per annum on and from 10th March 1993) within a period of 1 month from date, failing which, the rate of interest shall stand increased to 10% per annum.
8. Let the LCR be sent immediately to the Court below by Special Messenger by the Registry. Costs of such special messenger shall be borne by the appellants and shall be deposited by day-after-tomorrow (11.08.2023).
9. With the aforesaid observations, F.A. 242 of 2007 shall stand disposed of.
10. In view of the above, all interim applications shall stand also consequently disposed of.
11. There shall be no order as to costs.
12. This Court appreciates the co-operation extended by the learned counsel of all the parties and the parties themselves in assisting quick resolution of the appeal.

13. All parties shall act on the server copy of this order duly downloaded from the official website of this Court.

(Rajasekhar Mantha, J.)

(Supratim Bhattacharya, J.)