

**IN THE HIGH COURT AT CALCUTTA
CIVIL REVISIONAL JURISDICTION
APPELLATE SIDE**

PRESENT:

THE HON'BLE JUSTICE AJOY KUMAR MUKHERJEE

C.O. 101 of 2021

**M/S. Vishwamitra Ramkumar
Vs
M/S. Ghosh & Sons Private Limited**

For the Petitioner : Mr. Lutful Haque

For the Opposite party : Mr. Ayan Banerjee
Ms. Debashre Dhamali

Heard on : 03.01.2023

Judgment on : 09.01.2023

Ajoy Kumar Mukherjee, J.

1. Challenging order nos. 171 dated 11.02.2020 and 172 dated 05.03.2020 passed by the learned Judge, 6th Bench, Small Causes Court at Calcutta in Ejectment Execution Case No. 85 of 2008, present application under section 227 of the constitution of India has been preferred. Petitioner contended that the petitioner as owner/land lord had filed seven separate suits against the then existing tenants of the suit building before the learned City Civil Court,

Calcutta, and the opposite party herein was defendant/tenant in one of such eviction suits, which got dismissed by the Trial Court. Appeal was preferred before this court and the appeal was also dismissed. However the Hon'ble Supreme court passed decree for eviction on the ground of building and rebuilding. Hon'ble Supreme Court passed the decree of eviction on 05.04.2007 under section 13(1) (f) of the West Bengal Premises Tenancy Act, 1956 (herein after called as Act of 1956) and directed the trial court to expeditiously pass decree and consequential orders in terms of section 18A of the Act of 1956, within three months. The petitioner states pursuant to the aforesaid direction the learned judge of City Civil Court, Calcutta passed a decree on 27.11.2007 directing the plaintiff/petitioner to obtain the sanctioned plan from the concerned authority and to produce the same to the court and to serve copy of the sanctioned plan to the tenants preferably within a period of three months from the date of the order and defendant /opposite party herein was directed to vacate the suit premises within one month from the date of receipt of production of the sanctioned plan by the plaintiff and plaintiff was directed to put back possession to the tenants in reconstructed building within one year from the date of delivery of possession by the tenants to the plaintiff and in case of any neglect or failure to delivery of possession of the shop room, either by the tenants/defendants or by the land lord/plaintiff within the stipulated period as mentioned in the body of the judgment, possession will be delivered by putting the decree into execution on an application made by either of the parties.

2. Petitioner submits that the petitioner obtained revised sanction plan from the concerned authority and produced the same to the court, serving the copy of the sanction plan to the tenant on 23rd April, 2008. Petitioner further submits that the judgment debtor/opposite party herein failed to deliver possession of the suit premises in utter violation of the aforesaid decree within time and on the contrary had initiated various frivolous proceedings by challenging the decree and after expiry of near about eight years, by filing the present Ejectment execution case no. 85 of 2008, the seal bailiff delivered possession of suit shop room only on 26th April 2016 with the help of police. The petitioner further submits that the petitioner got vacant possession from all other tenants only on 30th August 2017 and pursuant to the said decree passed by the learned City Civil Court, Calcutta, the decree holder is to give back possession within one year from the date of handing over possession of the tenanted shop room. Accordingly opposite party herein /tenant in order to get back possession from landlord/petitioner in terms of decree filed an application before the learned executing court in the execution case filed by present petitioner for fixing a date for delivery of possession to execute the decree passed on 23rd November, 2007, in Ejectment suit no. 480 of 1988 and for necessary directions to be issued upon the seal bailiff of the court to execute the decree by giving possession to the defendant in respect of it's tenancy of 290 square feet.

3. The petitioner states that he filed objection denying and disputing the contents of said application and contended that the proceeding initiated by the

opposite party is a premature application *inter alia* on the ground that the construction work of the suit property is still not completed and is still in progress and the opposite party with *malafide* intention has filed the said application which is liable to be dismissed with costs in the facts and circumstances of the case.

4. Mr. Haque, learned counsel appearing on behalf of the petitioner submits that the court below had directed by the aforesaid impugned orders dated 11.2.2020 and 05.03.2020 to take steps for issuance of writ of delivery of possession by the court for restoration of possession but the court below has failed to consider the submissions of the petitioner while passing the aforesaid order. Accordingly he submits that unless orders impugned are set aside the petitioner shall suffer irreparable loss and hardship. Moreover if the order impugned are allowed to be sustained, then the same will be in aid of the acts and actions of the opposite party, who acted in flagrant violation of the decree of the Hon'ble Supreme Court as well as of the learned City Civil Court. The learned court below erred in not considering that the opposite party/tenant in utter violation and disregard to the judgment and decree passed by the Hon'ble Supreme Court and learned City Civil Court, Calcutta had not handed over the suit property in time and thus frustrated the decree and learned trial court also failed to consider that the application is premature as construction work has not yet been completed and the possession would have been delivered only after completion of construction work and learned court below should have considered with regard to the maintainability of the application filed by the

opposite party. Accordingly the petitioner has prayed for setting aside the orders impugned.

5. Mr. Banerjee learned counsel appearing on behalf of the opposite party raised vehement objection and contended that the possession of the premises in question was handed over to the petitioner herein on 26th April, 2016 and since then the petitioner herein has not intentionally completed the construction work in respect of the premises in question. He further contended that the petitioner admitted in this revisional application that he got vacant possession from all the tenants on 30th August 2017 and in pursuant to the decree of the City Civil Court he is bound to give back possession of the tenanted premises to the opposite party herein within one year from the date of handing over possession of the respective shop room but the petitioner herein inspite of completion of building rebuilding work in respect of entire building, only kept premises in question incomplete intentionally for a long time with *malafide* motive. He further contended that even at the time of filing application, few years back the petitioner herein stated that the application is premature as the construction work of the suit property has not been completed. He further submits by showing photographs that till date the petitioner has not completed the construction work to deprive opposite party herein from enjoying the fruits of the decree and as such the court below was justified in passing the order impugned which does not call for interference.

6. I have extensively heard learned counsel for both the parties. At the time of hearing learned counsel for the petitioner submits that even if opposite party

feels aggrieved by not getting back possession of the suit property within stipulated period, he could have filed separate execution case in order to execute the decree passed by the city civil court but instead of that he has filed application for executing his part of the decree, in the execution proceeding which was initiated on behalf of the petitioner herein for getting possession of the tenanted premises from the tenant being Ejectment execution case no. 85 of 2008, and as such said petition is not maintainable, but the court below without considering the same has passed the order for issuance of writ of the delivery of possession.

7. Before going to further details let me reproduce the order passed by Bench-IV City Civil Court Calcutta in Ejectment Suit 480 of 1988 which runs as follows:-

“It is ordered and decreed that the suit be and the same is decreed on contest but without costs. The plaintiff do get a decree for eviction u/s 13(1) of the WBPT Act. The sketch plan filed by the plaintiff on 13.11.0 do form part of the decree. The plaintiff is directed to obtain the sanctioned plan from the concerned authority and to produce the same to the court and to serve copy of the said sanctioned plan to the tenants preferably within three months from the date of this order. The defendant is directed to vacate the suit premises within one month from the date of receipt production of the sanctioned plan by the plaintiff . The plaintiff is directed to put back possession to the tenants in the reconstructed building within one year from the

date of delivery of possession by the tenants to the plaintiff. In case of any neglect or failure to deliver possession of the shop room either by the tenants/ defendants or by the landlord/plaintiff within the stipulated period as mentioned in the body of the judgment, possession will be delivered by putting the decree into execution on an application of either of the parties.”

8. Needless to mention that this order was passed by the court below in compliance with direction made by the Supreme Court. In paragraph 16 of Judgement dated 5th April, 2007 in Civil Appeal No. 1829 of 2007 arising out of SLP (C) No. 19290 of 2005, the Supreme Court was pleased to pass the following order:-

“ We therefore allow these appeals and hold that the landlord is entitled to decrees for eviction under Section 13(1) (f) of the Act. We direct the trial court to expeditiously pass decrees and consequential orders in terms of Section 18A of the Act when moved in that behalf by the landlord. We direct the trial court to pass the consequential decrees within three months of it being approached either with the existing plan or with the modified plan by the landlord as we have directed above. The parties will appear before the trial court for seeking appropriate directions for further appearance on 14.05.2007.”

9. In the said order the Apex Court was further pleased to observe that certainly any attempt to defeat that obligation under section 18A of the Act

cannot be encouraged and should be put down with iron hand. In other words the land lord will be pinned down to his obligations under section 18(A) of the Act and would not be allowed to extricate himself from it or delay the performance of his obligations by resort to devious means. In the said judgment Apex Court further held “ we trust that the concerned authority when approached in that behalf will take note of the fact that our direction is in the interest of the sitting tenants in the building and that the little modification needed in the plan is permitted without violating any of the building rules.”

10. It appears that inspite of such specific observations made by the Apex Court, the petitioner herein has failed to assign any cogent reason as to why the suit premises could not be completed till now for giving back possession to tenant and under what circumstances possession of the suit premises could not be handed over to the tenant within stipulated period mentioned in the decree when admittedly he obtained possession of the suit premises for the building and rebuilding purpose from the defendant/opposite party herein on 26th April 2016 and admittedly from other tenants on 30th August 2017.

11. On perusal of the judgment passed in Title Suit No. 480 of 1988 it appears that the court below has given direction to both the parties. The plaintiff was directed to obtain sanction plan and to produce the same before the court and to serve copy to the tenants preferably within three months from the date of the order and defendant was directed to vacate suit premises within one month from the date of receipt of production of the sanctioned plan by the plaintiff and on the later part of the order the plaintiff was directed to

put back possession of the tenant in the reconstructed building within one year from the date of delivery of possession by the tenants to the plaintiff. Accordingly in the same judgment and decree, the direction was made to both the plaintiff and to the defendant for compliance of their respective obligation and liabilities. In the last part of the order it was further mentioned in case of any neglect or failure of delivery of possession of the shop room either by the tenant/defendant or by the land lord/plaintiff within the stipulated period as mentioned in the body of the judgment, possession will be delivered by putting the decree into execution on an application of either of the parties. Accordingly the petitioner herein filed the aforesaid execution case and obtained possession. Now the defendant /opposite party is very much justified in making the prayer that in spite of getting delivery of possession on 26th April 2016, the petitioner herein has neither completed the work of building/rebuilding of the portion of premises in question for putting back possession to the tenant /opposite party, nor has delivered possession in compliance with the order of the city civil court which directs that the plaintiff/land lord, shall put back possession to the tenant /opposite party to the reconstructed building within one year from the date of delivery of possession by the tenants to the plaintiff. Plea taken by the petitioner herein that the defendant/opposite party had not delivered the possession within one month from the date of receipt of the production of the sanction plan as ordered by the court and that the petitioner herein got possession of the premises in question by executing the decree through police help, cannot be the ground for the

petitioner to flout the order passed by the city civil court to comply his part of obligation within the stipulated period. However, it appears to me that as per the spirit of the said judgment, when the plaintiff/petitioner has failed to put back the possession of the premises in question to the tenant/opposite party herein, within one year from the date of delivery of possession by the tenant /opposite party to the plaintiff petitioner, the tenant /opposite party could have filed separate execution case for executing the decree to get back possession of suit premises from landlord/petitioner interms of the decree passed in Ejectment suit no 480 of 1988.

12. In this context it is to be made clear that though the petitioner has taken a plea of maintainability of filing such application before court below stating that under section 18A, such execution proceeding lies before controller after completion of building/rebuilding work and execution proceeding before court below is not maintainable, but in my considered opinion, such plea is dubious in nature since petitioner himself alleged that the application before court below is premature. Judgment of the Apex Court was passed as per the provision of Section 13(1) (f) of the Act of 1956 and the trial court was directed to pass decree and consequential orders in terms of section 18A of the Act. The petitioner herein even obtained possession from tenant/opposite party by executing decree before trial court, now he cannot take the plea that defendant /tenant cannot get back possession by executing the same decree from the court below. He must not be allowed to blow hot and cold at the same time. Moreover executing court rightly observed that it is not an independent

application under section 18A of the Act of 1956 for restoration of possession after decree and reconstruction which is required to be filed before concerned rent controller but the decree has been passed by court below in terms of judgment and directions passed by the Apex Court and as such execution proceeding is very much maintainable before the court below.

13. In view of above order impugned dated 11.02.2020 and 05.03.2020 passed in Execution Case No. 85 of 2008 are hereby set aside.

14. In view of above, C.O. 101 of 2021 is disposed of giving liberty to the opposite party /tenant to file separate execution proceeding before the court below to execute the decree passed in Title Suit No. 480 of 1988 within a period of two months from the communication of the order and in the event of filing such application for execution of the decree by the tenant/opposite party, the court below shall dispose of such execution proceeding within a period of six months of filing such execution proceeding, without giving any unnecessary adjournment to either of the parties.

There will be no order as to costs.

15. Urgent photostat certified copy of this judgment, if applied for, be supplied to the parties upon compliance with all requisite formalities.

(AJAY KUMAR MUKHERJEE, J.)