

12-10-2023
Item no.2 CD
Subrata
Bhattacharyya
AR(C)

IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
(Commercial Division)

FMAT(ARBAWARD) No.41 of 2023
Rajiv Ranjan Kumar
-vs-
Sri Debasis Sengupta & Ors.
with
CAN No.1 of 2023
and
CAN No.2 of 2023

Mr. Aniruddha Chatterjee
Mr. Tanmoy Mukherjee
Mr. Amal Kumar Saha
Mr. Iresh Paul
Ms. Granthana Kayal ...for the appellant

Mr. Pratip Mukherjee
Mr. Prodyut Banerjee
Mr. Ankit Misra
Mr. Raju Mondal ...for respondent no.1

Mr. Srijib Chakraborty
Mr. Aditya Mondal ...for respondents no.2 & 3

Mr. Saptarshi Kumar Mal ...for respondent no.4

Mr. B.K. Singh
Ms. Susmita Paul
Ms. Ria Paul ...for Diamond Restaurant

Mr. Raja Ghosh
Ms. Jyotsna Mukherjee ...special officers

This is an appeal from a judgement and order of the learned court below dated 22nd August 2023 refusing an order of injunction.

The injunction sought was with regard to dealing with a property in Block No.CD, Plot No.7, Salt Lake City, Bidhannagar (North), Kolkata – 700 064.

There is substantial dispute between the parties with regard to ownership of certain portions of the said premises and more serious disputes with regard to possession of persons in certain portions thereof.

To ascertain the prima facie case of the parties with regard to possession, we had appointed Joint Special Officers to visit the premises, make an inspection and file a report before us. They made two inspections and filed a report circulating it to the parties. We gave an opportunity to the parties to file an exception to the report by way of an affidavit.

The respondents no.1, 2 and 3 have filed exception to the report.

At the time the Joint Special Officers were in the midst of inspection, Ms. Susmita Paul, learned advocate, appeared for Diamond Restaurant and stated that the respondents no.2 and 3 were the employees of her client and had no right to possession of the said premises. This assertion was denied by Mr Chakraborty representing the respondents no.2 and 3.

We have considered the report of the Joint Special Officers and the exception taken to it by the said respondents.

Prima facie, we are of the view that the section 9 application should be considered by the learned court below on the basis of the cause papers before it and also on the basis of the cause papers in this appeal, a copy whereof will be filed before the said court by the appellant. Existence of the arbitration clause governing the parties is also disputed by the respondents no.1, 2 and 3 which is also to be considered by the said court.

We order accordingly, and we direct the learned court below to dispose of the section 9 application upon exchange of affidavits within a period of three months from 17th November 2023.

The status quo regarding possession, as framed by the Joint Special Officers in their report, shall be maintained by all the parties and Diamond till the disposal of the interim application.

If the nature and character of the property is changed by any party as apprehended by Mr Chakraborty, his client is granted leave to make an appropriate application before the learned court below.

For the time being Diamond Restaurant shall be considered by the learned court below as a party, whose presence is necessary for the purpose of disposal of the section 9 application. Whether or not to add Diamond Restaurant as a party is left to the learned judge.

All points are kept open before the said court.

The Joint Special Officers shall be entitled to further remuneration of 500 GMs each to be shared by the parties in the same manner as they shared the earlier remuneration. The appointment of the Joint Special Officers will continue until discharged by the learned court below.

The appeal and the connected applications – FMAT(ARBAWARD) No.41 of 2023 and CAN No.1 of 2023 and CAN No.2 of 2023 – are thus disposed of.

[I.P. Mukerji, J]

[Biswaroop Chowdhury, J]

