

OD-4

IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
ORIGINAL SIDE

APOT/37/2023
with
EC/55/2017
IA No.GA/2/2023

DIRECTOR GENERAL (TOWN PLANNING) AND ORS.
VERSUS
M/S. RANA CHAIRS AND ANR.

BEFORE:

The Hon'ble JUSTICE SOUMEN SEN

AND

The Hon'ble JUSTICE UDAY KUMAR

Date : 26th June, 2023.

Appearance:
Mr. Arijit Dey, Adv.
...for the appellants.

Mr. Chanchal Kumar Dutta, Adv.
Ms. Krishna Mallick, Adv.
...for the respondents.

The Court : Learned Counsel for the appellant has produced a certificate dated 27th March, 2023 to show compliance of the order dated 14th March, 2023. The said document is taken on record.

The appeal is arising out of an order passed by the learned Single Judge in the execution proceeding by which the name of the Kolkata Municipal Corporation and the Commissioner of the Kolkata Municipal Corporation as judgment-debtors were allowed.

Learned Counsel for the appellant submits that the learned executing Court did not have the jurisdiction to add the Kolkata Municipal Corporation and the Commissioner of Kolkata Municipal Corporation as debtors. The application for addition of party has been taken out by the decree holder after delay of five years

from the filing of the execution proceeding. Since the Kolkata Municipal Corporation and the Commissioner of Kolkata Municipal Corporation had preferred an appeal challenging the ex parte decree, they should be added as parties to the execution proceedings. This matter has a chequered history.

The plaintiff filed a suit before the Hon'ble Bench of the Delhi High Court on the Original Side, praying, inter alia, for a sum of Rs.50,83,185/- along with interest. In view of failure on the part of the Kolkata Municipal Corporation to pay the entire consideration amount in respect of 231 chairs supplied, the suit was decreed only in the year 2013. On September 17, 2015, the suit was decreed ex parte with the principal amount along with pendente lite with costs assessed at Rs.1 lakh.

The present appellants filed an application before the Hon'ble Division Bench of the Delhi High Court for setting aside of the ex parte order along with a prayer for condonation of delay. Subsequent thereto, an application was filed by the present appellants for setting aside of the ex parte decree under Order IX Rule 13 of the Code of Civil Procedure.

Justice Manmohan by a judgment and order dated 5th October, 2018 refused to set aside the ex parte decree. This order was affirmed in appeal by the Division Bench of the Delhi High Court on 4th July, 2022. A Special Leave Petition (Civil) no.31540 of 2022 at the instance of the present appellants was dismissed on 20th April, 2023 upon condonation of delay. In between, the said decree was transferred to the Calcutta High Court in 2017 in which an order was passed on 20th November, 2018 attaching the bank account of the Kolkata Municipal Corporaiton for a sum of Rs.52 lakhs. This amount has been paid on 3rd June,

2023. In between, the present appellants filed an application under Section 47 of the Code of Civil Procedure, but ultimately had withdrawn the said proceeding. Although initially the suit was originally flying against the Director General (Town Planning) and Ors, but subsequent proceedings would clearly show that the appellants have been objecting and/or participating the said proceeding and had challenged the order up to the Hon'ble Supreme Court. By reason of the order of the Hon'ble Supreme Court, the said decree is enforceable. In fact, a substantial amount payable under the decree has been paid.

In such view of the matter, the grounds taken for challenging the order passed by the learned executing Court is completely unmeritorious.

The learned trial Judge for proper execution of the said decree had added the present appellants. The appellant no.1 is a statutory body and they have all throughout participated in the said proceeding and notwithstanding the initial defect that may have been present in the description, his subsequent conduct would clearly show that the appellants are the real parties and they have contested the proceeding up to the Hon'ble Supreme Court.

Under such circumstances, we do not find any reason to interfere with the order passed by the learned Single Judge.

Accordingly, the appeal being APOT/37/2023 and the application being GA/2/2023 are dismissed.

[SOUMEN SEN, J.]

[UDAY KUMAR, J.]