

02 21.03.24

Ct. No. 04

akd

F.M.A. 577 of 2021
CAN 1 of 2021

Smt. Tripti Makhija & Ors.
Vs.
Smt. Pratima Naskar & Anr.

Mr. Gopal Chandra Ghosh,
Mr. Sibsankar Bandyopadhyay.
... for the appellants.

Mr. Sounak Bhattacharya,
Mr. Sounak Mandal,
Mr. Anirban Saha Roy.
... for the respondents.

Pursuant to the order dated 15th March, 2024 the Special Officer appointed by this Court submits the report in a sealed envelope. Let the same be taken on record. We directed the Assistant Court Officer to open the seal.

Upon perusal of the said report we find that the Special Officer has taken possession of the suit premises and has also put a padlock thereat. The keys of the said padlock are kept in a separate envelope, which is also submitted before us.

The possession of the decretal property was obtained on the basis of an ex parte decree for eviction; which was subsequently set aside by the competent Court. Despite the decree having set aside the possession was not handed over to the judgement-debtor, the appellants are constrained to take out an application under Section 144 of the Code of Civil Procedure.

By the order dated 15th March, 2024 we set aside the order of the Trial Court by which the said application filed under Section 144 of the Code was dismissed.

Since the possession was obtained on the strength of the ex parte decree, which was later on set

aside, we do not find any justification in the stand of the decree-holder to retain the possession, rather they should restitute the possession in favour of the judgement-debtor.

We, therefore, direct the Assistant Court Officer to hand over the sealed envelope containing the keys of the padlock put by the Special Officer to the learned Advocate on record of the appellant, who in turn will hand over the same to his clients upon a proper receipt.

Since the possession has already been given to the appellants, nothing left in the instant appeal to be decided further. Accordingly, the matter shall be shown to have been disposed of in terms of the order dated 15th March, 2024.

(Harish Tandon, J.)

(Madhuresh Prasad, J.)