

17 **16.04.**
2024

Ct. No. 04

ab

FMA 276 of 2023
IA No. CAN 1 of 2024

Sri Kajal Biswas
Vs.
Sri Om Prakash Jalan and others.

Mr. Arnab Roy,
Mr. Satyam Mukherjee,
Mrs. Sayani Ahmed,
Mr. Purnendu Sekhar Ghosh.
... for the appellant.

Mr. D. Roy,
Mr. Saurav Sen,
Mr. Kaustav Chandra Das.
... for the respondent no. 1 & 2.

The instant appeal is listed for admission under Order XLI Rule 11 of the Code of Civil Procedure, but we decided to dispose of the appeal as we find that the points, which are urged before us, can be conveniently decided in presence of the parties.

The instant appeal is filed by the defendant no. 1(A)/appellant assailing the order dated 16th February 2023 passed by the learned Civil Judge (Senior Division), 2nd Court at Alipore in Title Suit No. 44 of 2015 wherein an application for appointment of the Receiver was allowed and the Member of the Bar was appointed as a Receiver in respect of a portion of the property, which is under the occupation of the United Bank of India, which is now known as Punjab National Bank, as stated thereof.

By the impugned order, the Receiver was also directed to take charge of the said tenanted portion and to manage and preserve the said property by collecting the rent and the profits therefrom upon lawful use of the same. The application for appointment of a Receiver was taken out by the contesting respondents on the premise that the said United Bank of India has merged with the

Punjab National Bank and a decision has been taken to vacate the said tenanted portion and all accounts of the customers shall be subsumed into the nearest branch of Punjab National Bank.

It is apparent from the aforesaid stand that the tenant wanted to hand over the possession of the tenanted portion, but because of the litigation concerning the partition and separation of shares amongst the co-sharers, taking over the possession and retention thereof may create a further complication and/or dispute. The Trial Court was of the view that in order to protect the property it would be appropriate to appoint a Member of the Bar as Receiver to avoid dissipation of the tenanted property pending the suit.

The Counsel for the appellant at the very outset invited our attention to a notice pasted on the conspicuous part of the tenanted premises by the said tenant evincing that the merger of the branch has been deferred for the reasons indicated therein. It is sought to be contended before us that since the Bank has decided not to shift the said Branch, the purpose of appointing the Receiver has eclipsed and, therefore, the impugned order needs to be interfered with.

Though the aforesaid notice, as relied upon by the appellant, was not a part of the Trial Court record, but we permitted the parties to rely upon the same as an additional evidence necessitated by a subsequent event.

At the first blush we were somehow convinced with the submission of the appellant that the purpose for which the appointment of the Receiver was sought, diminished by a subsequent act of the tenant, but our attention is drawn to a further decision taken by the tenant on 21st March 2024 wherein the Bank intended to hand over the possession in respect of the said tenanted premises. We have further taken note of such subsequent event and find that though the original purpose for seeking an appointment of Receiver is

resurrected yet the manner in which the powers have been given upon the Receiver would create a further anomalous situation, more particularly, when the Receiver inducts any person into the tenanted property after getting the possession thereof.

Since the parties are litigating for separation of shares, the question of taking possession by them would create more complication, more particularly, the retention thereof, as the undivided shares held by the parties have not been separated as yet.

In such view of the matter, we do not find any ground warranting interference with the decision of the Trial Court in appointing a Receiver in respect of a tenanted premises, but we hasten to modify the said order to the effect that the said Receiver shall take possession of the tenanted premises from the tenant and shall keep the same with him until further order passed in the said suit.

It is, however, made clear that the Receiver shall not induct any person into the said portion after taking possession and if the situation so demands, liberty is granted to the Receiver to approach the Trial Court for seeking such leave.

With these observations, the appeal and the connected application being CAN 1 of 2024 are disposed of.

There shall, however, be no order as to costs.

(Harish Tandon, J.)

(Madhuresh Prasad, J.)

