

30.01.2024

Court : 04
Item : 01
Matter : FMA
Status : DO
Bench ID : 266176
Transcriber : NANDY

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE

FMA 302 of 2023
with
CAN 1 of 2023

Chinu Chakraborty
Vs.
Nandita Bhowmick

Mr. Arnab Ray, Advocate
Mr. Saytam Mukherjee, Advocate
Ms. Sayani Ahmed, Advocate

..... for the Appellant

Mr. Surya Prasad Chattopadhyay, Advocate
Mr. Arjun Samanta, Advocate

..... for the Respondent

Ms. Sangeeta Roy, Advocate
Mr. Sujit Chatterjee, Advocate

..... for the State

Mr. Sarbananda Sanyal, Advocate

..... Special Officer

1. By consent of the parties, we have taken up the appeal without following the procedures in relation therewith i.e. bringing the Lower Court Record, preparation of Paper Books etc.
2. The instant appeal arises from an interlocutory order passed by the First Appellate Court by which the respondents was directed to maintain *status quo* with regard to nature and character of the suit property and also restrained from damaging, wasting or alienating the suit property by any means or to create any third party interest over the same till the disposal of the appeal.
3. At the time of admission of the instant appeal, we found that the possession of the suit premises was taken in haste and a reasonable suspicion was percolated in the role of the Bailiff who secured the possession by filing the report indicating that the possession was given amicably without any resistance and/or obstruction from the judgment-debtor.

4. Several orders were passed including a direction upon the learned District Judge not to assign any writ of possession to the said process server which in fact, has been complied with. We further sought for a report from the Police administration as the allegation was made by the judgment-debtor that the Bailiff with the aid and assistance of the police personnel recovered the possession but the said report revealed that there was no such assistance provided to the Bailiff.
5. Be that as it may, the judgment-debtor who is personally present in Court consented for disposal of the appeal by the First Appellate Court as the possession of the suit premises in terms of the order passed in the instant appeal is with the Special Officer. Though the record revealed that on the said fateful day, the appeal was listed and an adjournment was sought on behalf of the decree-holder and on the other hand, the decree-holder proceeded to recover the possession through the Bailiff.
6. We do not want to go into such aspect as the parties have consented for disposal of the First Appeal pending before the First Appellate Court.
7. Without making any observations, we dispose of the instant appeal directing the First Appellate Court to dispose of the same within two months from the date of communication of this order in accordance with law.
8. Since the possession is with the Special Officer, he will continue to hold the same and the First Appellate Court is free to pass any direction upon the Special Officer consequent upon the disposal of the said appeal.
9. For abundant precaution, it is hereby made clear that the appointment of the Special Officer shall not be treated as appointment as 'Commissioner' either under Order XXXIX Rule 7 or Order XXVI Rule 9 of the Code of Civil Procedure.

10. We have given to understand that an interlocutory application is pending before the First Appellate Court which in view of the Order passed by us becomes infructuous and should be treated to have been dismissed as such.
11. With these observations the appeal being **FMA 302 of 2023** and the application being **CAN 1 of 2023** are **disposed of**.
12. Let the entire record brought before this Court, be sent down to the First Appellate Court through Special Messenger at the cost of the appellant. Such cost shall be deposited in course of this day.
13. Urgent Photostat Certified Copy of this order be given to the parties, if applied for, on priority basis.

(Harish Tandon, J.)

(Madhuresh Prasad, J.)