

21st November,
2024
(AK)
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S.M.A. 2 of 2024
IA No: CAN 1 of 2024

M/s. Energy India a Partnership Firm, represented by its
partners Tarun Kanti Guha and others

Vs.

M/s. Super Complex Pvt. Ltd. and another

Mr. Sayan Sinha

Mr. Saikat Nag

Mr. Adil Naser

...for the appellants/petitioners.

Mr. Probal Kr. Mukherjee

Mr. Souradipta Banerjee

Ms. Fatima Hassan

...for the respondent/opposite party no.1.

1. Learned counsel for the appellant raises two questions before this court.
2. First, that a purported letter showing approval of the superior landlord in the suit property for subletting to the appellant was not considered by the courts below.
3. Secondly, no opportunity of adducing evidence was granted to the appellants by the executing court or before the First Miscellaneous Appellate Court.
4. Upon a perusal of the judgments of both the courts, however, we find that primarily two grounds were cited by the courts for turning down the claim of sub-tenancy of the appellants.
5. First, that the issue of subletting was a ground for eviction in the main suit and the learned trial

Judge, in the judgment and decree of eviction, categorically considered and decided conclusively the issue of sub-tenancy and as such the executing court is barred from reopening such issue.

6. Also, the both the courts proceeded on the premise that there was no compliance of Section 26 of the West Bengal Premises Tenancy Act, 1997 in respect of the purported sub-tenancy claimed by the appellants.
7. A photocopy of the judgment of the trial court is handed over by learned senior counsel for the respondents upon being asked by us to furnish the same.
8. Hence, even without hearing the respondent at the Order XLI Rule 11, Civil Procedure Code stage, we take such document on record.
9. We find from the said judgment that the trial court conclusively decided the issue and also considered a document marked as Exhibit C/1 and disbelieved that the same created a jural relationship of valid sub-tenancy between the appellants and the landlord within the contemplation of Section 26 of the 1997 Act.
10. Since such issue has been finally and conclusively decided by the trial court, and it is well-settled that the executing court cannot go behind the decree, we do not find any error of law or fact on the part of

the executing court or the First Miscellaneous Appellate Court in dismissing the application of the present appellants under Order XXI Rules 97 to 101 of the Code of Civil Procedure.

11. Hence, we do not find any substantial question of law involved in the matter.
12. Accordingly, SMA 2 of 2024 is dismissed under Order XLI Rule 11 of the Code. The connected application bearing CAN 1 of 2024 is also dismissed accordingly.
13. Needless to say, nothing in this order shall prevent the judgment resistor from approaching the executing court seeking some breathing space to vacate the premises, if so permissible otherwise in law.
14. There will be no order as to costs.
15. Urgent photostat copies of this order, if applied for, be given to the parties upon compliance of all requisite formalities.

(Sabyasachi Bhattacharyya, J.)

(Uday Kumar, J.)