

15.04.2024
SSS (2)

MAT 1775 of 2023
With
CAN 3 of 2024

Biswanath Chakraborty

Vs.

State of West Bengal & Ors.

Dr. Debabrata Karan
Mr. Debopriyo Karan, Advs.

.....for the Appellant.

Mr. Sounak Bhattacharya,
Mr. Abhirup Halder, Advs.

.....for the Respondent no. 5.

CAN 3 of 2024

This is an application by the respondent no. 5. It is in an appeal which was disposed of by us on 18th January, 2024. Our order was in the following terms:-

“We have considered the report of the Special Officer. We appreciate the work done by her in compliance with our order dated 30th November, 2023. According to the report, two facts are very important. The first one is that the respondent no. 5, Smt. Jhumki Chakraborty is found to be in possession of a substantial portion of the said property comprising of the ground floor. The first floor is vacant. Neither the appellant Biswanath Chakraborty nor his brothers

have any presence in the property.

Secondly, on her second visit which was a surprise one, the Special Officer found the presence of a third party on the ground floor.

Mr. Jayanta Kumar Mitra, learned senior advocate appearing for the appellant submitted that admittedly being the owner of the property the appellant had the right to be in possession thereof.

He contended that the police had a duty to ensure that the appellant, who is the owner of the premises is not dispossessed and if dispossessed, to restore his possession.

On the other hand, it was submitted on behalf of the respondent no. 5 that there was a matrimonial dispute between her and a brother of the appellant. The property was built out of the fund provided by the brother. To cause difficulties to the respondent no. 5, the brother transferred the property to the appellant. Under the law, the respondent no. 5 is entitled to exclusive possession of the property.

On behalf of the State, learned counsel submitted that on the basis of complaints filed by the parties, criminal cases had been started and were continuing in the criminal court after framing of charges.

Although the title to the property is not in dispute, there is considerable dispute between the parties with

regard to the right to its possession.

These matters are to be more properly adjudicated upon and decided in a civil forum than by directions by a writ court to the police.

For the time being, we appoint Smt. Shanti Das, Advocate, the Special Officer as the Receiver. With the help of the officer-in-charge of the local police station, she will take symbolic possession of the entire premises. She shall make a note and prepare a plan of areas which are vacant and which are occupied and provide a description of its occupancy. The parties shall not sell, otherwise transfer, part with possession, or otherwise deal with the said property. Even temporary third party interest cannot be created.

The Officer-in-charge of the local police station shall ensure by keeping in touch with the Receiver that no breach of peace or any untoward incident occurs in the said premises.

The above order is subject to any order that may be passed by the civil court which would have the power of revoking, modifying or varying any part of this order.

This order will continue for a period of three months from date, subject to its continuance by a civil court. The Receiver will be paid an ad hoc remuneration of 800 Gms for this period to be shared equally by the parties, as was done during payment of

the initial remuneration.

The appeal and the connected application (CAN 2 of 2023) are disposed of by this order.”

In this application many allegations have been made against the Receiver. It is said that she has forcibly dispossessed the respondent no. 5/applicant and has padlocked the main entrance to the premises. This is denied by learned counsel for the appellant/writ petitioner.

The receiver is not present in court. We are told that she is ill and has not come to court.

In our judgment and order dated 18th January, 2024, we had specifically observed that the contentions between the parties gave rise to a civil dispute between them which could only be resolved in a civil court. This court was only passing orders in exercise of its writ jurisdiction to prevent unlawful occupation of the premises and unlawful dispossession therefrom, pending orders that might be passed by a civil court. Our order was stated to be valid for three months from 18th January, 2024. This means that it is not to have any effect on and after 18th April, 2024. We had stated in our said judgment and order that any further order with regard to the subject property or in relation to the parties herein concerning the property would have to be passed by the civil court which would have overriding effect over

our order.

Learned counsel for the appellant/writ petitioner states that a civil proceeding has already been instituted but Mr. Sounak Bhattacharya, learned advocate for the respondent no. 5/applicant says that his client has no notice or knowledge of it.

In that view of the matter, we dispose of this application (CAN 3 of 2024) by reiterating that our order dated 18th January, 2024 will lose its effect on and from 18th April, 2024. The Receiver will restore the status quo which was existing when she took charge of the said premises. The status quo which shall be maintained on and from 18th April, 2024 will depend on orders, if any, to be passed by the civil court.

[I.P. Mukerji, J]

[Biswaroop Chowdhury, J]