

27
09.4.2024
Ct. No. 14
SB

W.P.A. 26845 of 2023
Shyam Sundar Shaw
Vs.
The State of West Bengal & Ors.

Mr. Santi Kr. Roy
Mr. Fazlur Rahman
Mr. Argha Banerjee
Md. Babul Hussain ... for the petitioner

Mr. Suprobhat Bhattacharyya
Mr. Biswajit Das ... for respondent no. 7

Mr. Biswabrata Basu Mallick
Mr. Ratul Biswas ... for the State

A copy of affidavit of service filed on behalf of the petitioner is taken on record.

A copy of bailiff's report submitted in T.EX. 101 / 2016 before the Civil Judge (Jr. Division), 1s Court, Alipur, 24 Parganas (South) is also taken on record.

Learned counsel appearing on behalf of the petitioner submits as follows. The petitioner was a tenant in respect of a shop room in the property in question. He was running a grocery shop from there. Subsequently, he purchased the shop room. In spite of this, the respondent no. 6 sold out the entire property to respondent no. 7 for promotion of a building. In fact, respondent no. 7 thereafter filed a suit for eviction. A decree was passed in his favour. The petitioner filed an appeal which was dismissed for default. However, afterwards it was restored and the appeal is still pending. During pendency of such appeal the respondent no. 7 obtained an *ex parte* order of execution and went to execute the order. Articles including cash were looted away from the petitioner's shop in the process. A

complaint was made to the police authority but was not acted upon.

Learned counsel appearing on behalf of the private respondent 7 relies on the bailiff's report and submits as follows. There was no stay order passed by the appellate Court. A valid decree was actually executed by the bailiff on 26.9.2023. The report shows that the judgement debtor left the property in a peaceful manner. There is no question of a bailiff becoming a party to an alleged case of looting of articles.

Learned counsel appearing on behalf of the State submits as follows. It appears that a decree of a Civil Court was executed while an appeal was pending. However, there was no stay order passed in such appeal. A complaint was made by the petitioner directly before the Joint Commission of Police.

At this stage, learned counsel for the petitioner submits that the petitioner was constrained to move the Joint Commissioner of Police after the local police authority refused to register an F.I.R.

It appears that a decree passed by Civil Court was put to execution. The bailiff's report shows that the execution done in a regular manner.

If the petitioner still wants to make a complaint about the alleged looting away of articles, he has a liberty to act in terms of *Aleque Padamsee's Case (2007) 6 SCC 171*.

Learned Magistrate in such event shall not be swayed any observation made by this Court and take a decision independently.

No further order need be passed in this regard.

With these observations, the writ petition is disposed of.

As affidavits were not called for, allegations are deemed not to have been admitted.

Urgent Photostat certified copy of this order, if applied, be supplied to the parties, upon completion of requisite formalities.

(Jay Sengupta, J.)