

ORDER

OD – 6

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
ORIGINAL SIDE
(COMMERCIAL DIVISION)

APOT/331/2024
WITH
EC/304/2023
IA NO.: GA-COM/1/2024

E D ENTERPRISES PRIVATE LIMITED
VS
KAISER BEGUM AND ANR.

BEFORE:

THE HON'BLE JUSTICE HARISH TANDON
AND
HON'BLE JUSTICE PARTHA SARATHI SEN

Date : 4th October 2024.

APPEARANCE:

Ms. Labanyashree Sinha, Adv.
Ms. Srijeeta Gupta, Adv.
Mr. Ramendu Agarwal, Adv.
Ms. Sonia Das, Adv.
... for the appellant

Mr. Arik Banerjee, Adv. (VC)
Mr. Arijit Roy, Adv.
Mr. P.P. Mukhopadhyay, Adv.
... for the respondents

The Court:- The instant appeal is at the behest of the decree-holder assailing an order dated 6th August, 2024, passed by the executing Court, directing the judgment-debtors to hand over the articles, which were found at the time of taking possession of the decretal premises, to the receiver. Admittedly, on an application under Order XII Rule 6 of the Code of Civil Procedure, the judgment on admission was passed and the challenge to such order remains futile meaning thereby the decree passed against the judgment-debtors attained finality. The decree was put into execution. Such

judgment-debtors were not cooperating and/or appearing in the matter and ultimately, a receiver was appointed so that the possession may be taken in respect of a decretal premises and handed over to the decree-holder. At the time of taking possession of the decretal properties, the receiver found certain articles lying therein in an abandoned state. However, the inventory was made and the report filed by the receiver before the Court contains the list of inventories and on the basis thereof, the direction was passed to keep those articles into a physical/ actual possession of the decree-holder but the receiver would remain in symbolic possession thereof. The judgment-debtors subsequently appeared and sought for return of those articles. There appears to be a discrepancy in the disclosure made by the judgment-debtors and the list of articles prepared by the receiver at the time of taking possession. The executing Court without venturing to go into such arena of discrepancy directed the decree-holder to hand over the physical possession of the articles to the receiver which were shown in the list of inventory prepared by the receiver at the time of taking possession.

Obviously, the articles belonged to the judgment-debtors and the decree-holder after taking possession of the decretal premises was given custody by the receiver which cannot be construed to confer any right on the decree-holder to deal with such articles. The executing Court directed the decree-holder to hand over those articles shown in the list of inventory prepared by the receiver and did not delve into the disclosure made by the judgment-debtors which, in our opinion, cannot be faulted with.

We thus do not find any merit in the instant appeal. The appeal is dismissed.

The application is also dismissed.

However, considering the reality that in the meantime the time set forth in the impugned order has expired, we, therefore, extend the same for a period of five weeks from date so that the compliances can be secured by the decree-holder/appellant.

(HARISH TANDON, J.)

(PARTHA SARATHI SEN, J.)

sg.