

AD-30
Ct No.16
25.02.2025
TN

SAT 27 of 2025
IA No: CAN 1 of 2025

Saraswati Guha Majumdar and others
Vs.
Gopal Dutta and another

Mr. Chandrachur Chatterjee

....for the appellants

1. A certified copy of the order of the first court, that is, the executing court, is handed over in court and be kept on record.
2. The learned Advocate-on-record for the appellants is directed to carry out the necessary amendment in the preamble of the memorandum of appeal by incorporating the name of the learned Judge of the appellate court during the course of the day.
3. The present appeal has been preferred against an order whereby in a miscellaneous appeal, the appellate court affirmed the order of the executing court granting police help to hand over possession of the decretal property in favour of the respondents in execution of the eviction decree, by ousting the appellants.
4. However, we find that in the absence of any specific adjudication within the contemplation of Rule 101 of Order XXI of the Code of Civil Procedure, the order of the executing court could not have been a deemed

decree within the contemplation of Rule 103, hence not appellable.

5. Accordingly, in the first place, no miscellaneous appeal lay against the first order of the executing court.
6. However, even on merits, we do not find any error on the part of the appellate court in affirming the decree of the executing court.
7. Even if the miscellaneous appeal was deemed to be not maintainable in law, the order of the executing court remains, which directs possession to be given by police help from the appellants to the respondents. There is no infirmity in the said order.
8. As such, we do not find any scope of interference with the impugned judgment and order of either of the courts below, since both the orders were passed on valid reasons in the teeth of an eviction decree being suffered by the appellants.
9. At this juncture, learned counsel for the appellants submits that the appellants have arranged an alternative accommodation but requires some time to shift to the same and for completion of construction of the said alternative accommodation and that the appellants have their aged mother residing in the decretal premises. Although we have no discretion, in view of the dismissal of the appeal, to adjudicate on such count, leave is granted to the appellants to

approach the executing court with a limited prayer seeking some reasonable time to vacate the decretal premises, subject to an undertaking to that effect being filed by the judgment debtors/appellants. If such an application is filed within a week from date, the executing court shall decide the same in accordance with law upon giving an opportunity of hearing to the decree holder/respondents and independently come to a conclusion on the same.

10. In the light of the above observations, SAT 27 of 2025 is dismissed under Order XLI Rule 11 of the Code of Civil Procedure. IA No: CAN 1 of 2025 stands disposed of accordingly as well.
11. There will be no order as to costs.
12. Urgent photostat certified copies of this order, if applied for, be made available to the parties upon compliance with the requisite formalities.

(Sabyasachi Bhattacharyya, J.)

(Uday Kumar, J.)