

CPAN 1347 of 2025
In
FMA 1810 of 2019

Durga Pada Roy alias D.P. Roy
Vs.
Ajit Kumar Sarkar & Ors.

Mr. Swarnendu Kumar Ghosh
Mr. Apurba Kolya
...for the applicant

Mr. Alak Kumar Ghosh
Mr. Gopal Chandra Das
Ms. Ananya Das
...for the KMC

Ms. Deboleena Ghosh
...for the alleged contemnor no. 4

Mr. Samiran Giri
...for the contemnor no. 1

1. Matter is heard in presence of the learned advocates representing the applicant and alleged contemnor nos. 1, 4, 5, 6 and 7.
2. Mr. Swarnendu Kumar Ghosh, learned senior advocate representing the applicant alleges violation of the order dated 23rd September, 2019 passed on an appeal being FMAT No. 256 of 2019.
3. It is submitted on behalf of applicant that trial court passed an order on 30th January, 2019 directing defendant nos. 1 to 3 in the connected suit not to change the nature and character of the suit property as described in

Schedule-B in terms of KMC notice under Section 411(1) or otherwise till disposal of the suit. According to the applicant, the order passed by the trial court dated 30th January, 2019 needs to be taken into consideration while appraising act of contempt on the part of the alleged contemnor taking note of the observations contained in the order of the Division Bench dated 23rd September, 2019 which is alleged to have been violated.

4. In addition thereto, our notice has been drawn to a document at page 33 of the contempt application in order to demonstrate before this Court that the part of premises in respect of which applicant is tenant is outside the ambit of notice under Section 411 (1) issued by the concerned authority of Kolkata Municipal Corporation. Therefore, while appraising the act of contempt order passed by the trial court needs to be taken into consideration along with the order dated 23rd September, 2019 passed by the Division Bench and the document which is at page 33 thereof.
5. Trial Court passed order on 30th January, 2019 directing the defendant nos. 1 to 3 in the suit not to change the nature and character of the suit property in terms of KMC notice issued under Section 411(1) or otherwise till

disposal of the suit. However, said order dated 30th January, 2019 was appealed against by the defendants and said appeal was disposed of by the coordinate bench vide order dated 23rd September, 2019. We are required to consider taking note of the case made out in this contempt application whether order dated 23rd September, 2019 is violated or not.

6. In the order dated 23rd September, 2019 it was made amply clear by the coordinate bench that notice issued by the concerned authority of Kolkata Municipal Corporation under Section 411(1) was not interfered with as it was found that the said notice was not under challenge.
7. Furthermore, in response to the submissions made on behalf of the respondents in the appeal it was also clarified by the coordinate bench that notice under Section 411(1) was not delved into while deciding the appeal preferred by the landlord.
8. Therefore, on conjoint reading of the order passed by the trial court on 30th January, 2019 and the order passed by coordinate bench on 23rd September, 2019 it appears that order of trial court dated 30th January, 2019 merged with the order dated 23rd September, 2019.

9. It is not a proceeding where we are required to decide whether the part of premises in respect of which applicant was tenant was within the ambit of notice issued under Section 411(1) or not.
10. We record that as the coordinate bench in the order dated 23rd September, 2019 did not interfere with the notice of the Kolkata Municipal Corporation under Section 411(1) we do not find that present contempt application is maintainable.
11. Hence, contempt application stands dismissed.

(Uday Kumar,J.)

(Saugata Bhattacharyya, J.)