

18.04.2023
Item No.04
Court No.32
Avijit Mitra

FAT 216 of 2018
with
IA No. CAN 3 of 2022
with
IA No. CAN 4 of 2023
with
IA No. CAN 5 of 2023

Dara Singh & ors.
- Versus -
Ram Krishna Dhar

Mr. Krishna Raj Thakkar,
Mr. Abir Lal Chakraborty
...for the appellants
Mrs. Sabita Mukherjee Roy Choudhury,
Ms. Rajasree Paul
...for the respondent

The present appeal has been preferred challenging the judgment and decree dated 3rd February, 2018 passed by the learned Judge, 2nd Bench, City Civil Court at Calcutta in Title Suit No.403 of 2015. In connection with the said appeal an application for appropriate order being CAN 3 of 2022, an application for modification of the order dated 3rd July, 2018 being CAN 4 of 2023 and an application under order 41 Rule 27 of the Code of Civil Procedure being CAN 5 of 2023 have been filed. The parties have exchanged their affidavits in the applications being CAN 3 of 2022 and CAN 4 of 2023.

Records reveal that by an order dated 3rd July, 2018 the stay application was disposed of directing *inter alia* that *'the appellants shall pay the said amount of Rs.20,000/-*

per month from the month of July, 2018. The first of such instalment shall be made within 15th of July, 2018 and thereafter shall keep on depositing the monthly occupational charge at the said rate within 15th of each succeeding month for which it falls due with the Registrar General'.

The application being IA No. CAN 3 of 2022 has been preferred by the plaintiff/respondent praying for leave to withdraw the occupational charges deposited by the appellants in terms of the order dated 3rd July, 2018.

Mrs. Mukherjee Roy Choudhury, learned advocate appearing for the respondent/plaintiff submits that the sole respondent is an aged person and he is not getting the fruits of the decree. His business has totally collapsed and during the pandemic period, his son has also lost his service. He is thus suffering from extreme financial stringency and as such he may be permitted to withdraw the occupational charges, as deposited by the appellants.

Mr. Thakkar, learned advocate appearing for the appellants denies and disputes the contention of Mrs. Mukherjee Roy Choudhury and submits that in the event the appellants succeed in the appeal, it would be an impossibility to recover the amount, if allowed to be withdrawn by the respondent.

It appears that the respondent has filed the present application being CAN 3 of 2022 about four years after disposal of the stay application on 3rd July, 2018.

Having heard the learned advocates and considering the materials on record, we are not inclined to exercise any discretion in favour of the respondent and to allow him to withdraw the occupational charges deposited by the appellants.

Accordingly the application being IA No. CAN 3 of 2022 is dismissed.

On 25th January, 2023, the appellants filed an application for modification of the order dated 3rd July, 2018 being IA No. CAN 4 of 2023.

Mr. Thakkar, learned advocate appearing for the appellants submits that in compliance with the order dated 3rd July, 2018, the appellants have continued to deposit the amount as directed till date.

He submits that the appellants are hawkers and their earnings drastically reduced during the pandemic period. Presently, they are facing extreme financial stringency and it has become impossible for them to continue to deposit Rs.20,000/- per month for occupation of an area of about 314 sq.ft.

Mrs. Mukherjee Roy Choudhury, learned advocate appearing for the sole respondent denies and disputes the contention of Mr. Thakkar and submits that the premises are at the heart of the city and the appellants should continue depositing the amount as directed by the earlier order dated 3rd July, 2018 since there had been no change

in the circumstances as existing on the date the order was passed in the stay application.

A perusal of the order dated 3rd July, 2018 would reveal that the Court in consideration of the fact that the property is situated almost in the heart of the city having all facilities of a modern city, quantified and directed payment of Rs.20,000/- per month towards occupational charge. There is no explanation as to why the appellants waited for about five years to file the present application. We also do not find any change in the circumstances as existing on the date the order in the stay application was passed.

In the said conspectus, we are not inclined to modify the order dated 3rd July, 2018 and the application being IA No. CAN 4 of 2023 is, accordingly, dismissed.

The appellants have also filed an application under Order XLI Rule 27 of the Code being IA No. CAN 5 of 2023. A copy of the same has already been served upon Mrs. Mukherjee Roy Choudhury, learned advocate appearing for the respondent.

The said application being IA No. CAN 5 of 2023 shall be heard along with the appeal. The parties would be at liberty to exchange their affidavits in the said application.

Records reveal that in terms of the order dated 3rd July, 2018, special messenger cost was deposited by the appellants and the office called for the Lower Court Records

vide memo dated 24th July, 2018. However, it appears that the Lower Court Records have not yet been sent.

To expedite the final hearing of the appeal, we direct the appellants to put in the special messenger cost afresh within a week from date. Immediately thereafter the department shall call for the Lower Court Records.

Immediately, after arrival of the Lower Court Records, the department shall examine the same and, if found complete, shall issue notice of arrival of Lower Court Records to the learned advocate appearing for the appellants.

The appellants shall prepare requisite number of informal paper books-printed, typewritten or cyclostyled, as the case may be, out of Court, within two weeks from the date of service of notice of arrival of Lower Court Records and to file the same after serving copies thereof upon the learned advocates appearing for the respondent.

The parties would be at liberty to mention for final hearing of the appeal after filing of such paper books.

(Rai Chattopadhyay, J.) (Tapabrata Chakraborty, J.)

