



ORDER SHEET

OD-16

IA No. GA 3 of 2020
(Old No. GA 156 of 2020)
Old GA No. 829 of 2019
In
CS No. 53 of 2019
IN THE HIGH COURT AT CALCUTTA
ORDINARY ORIGINAL CIVIL JURISDICTION

MERAJ RASHID
VERSUS
MD. NASIM

BEFORE:
The Hon'ble JUSTICE DEBANGSU BASAK
Date: 19th February, 2021.

(Via Video Conference)

Appearance:
Mr. Jayak Kumar Gupta, Adv.
Mr. A. Rosul, Adv.
For the plaintiff.

Mr. Tarique Quismuddin, Adv.
Mr. Dhiraj Trivedi, Adv.
For the defendant.

The Court :- By this application, the defendant in a suit, seeks recalling of the order dated November 19, 2019 passed in Old GA No. 829 of 2019. The defendant also seeks the old GA No. 829 of 2019 be heard on merits by permitting the defendant to rely upon the affidavit-in-opposition affirmed on October 1, 2019.

Learned Advocate appearing for the defendant submits that, an interim order was passed on August 6, 2019. The same was confirmed on November 19,



2019. He draws the attention of the Court to the recording of the order dated November 19, 2019. He submits that, the defendant affirmed an affidavit-in-opposition to be used in Old GA No. 829 of 2019 on October 1, 2019, but the same was not filed by the then advocate on record of the defendant. Since the affidavit was already affirmed, in the fitness of things the Court should recall the order dated November 19, 2019 and the defendant should be permitted to rely upon the affidavit affirmed on October 1, 2019 and Old GA No. 829 of 2019 be disposed of on merits.

The plaintiff is represented.

The prayer made on behalf of the defendant is opposed by the plaintiff.

In suit for declaration and for recovery of money, the plaintiff was enjoying an interim order passed on August 6, 2019. The same was confirmed on November 19, 2019. By the order dated August 6, 2019, the defendant was restrained from interfering with the possession of the plaintiff in respect of the suit property. Directions for affidavit were given.

It appears that, the defendant affirmed an affidavit to contest Old GA No. 829 of 2019 on October 1, 2019. Old GA No. 829 of 2019 was taken up for consideration on November 19, 2019 when the defendant was represented.

On November 19, 2019 the then learned Advocate for the defendant submitted that, the defendant was not in contact with the advocate on record. That submission was placed on record on November 19, 2019.

The present advocate on record for the defendant produces the original affidavit dated October 1, 2019 affirmed by the defendant in Old GA No. 829 of



2019. Since the defendant affirmed an affidavit in opposition on October 1, 2019, the defendant should not be penalized.

In such circumstances, it would be appropriate to recall the order dated November 19, 2019 passed in Old GA No. 829 of 2019.

The parties before Court agree that, Old GA No. 829 of 2019 can be heard and disposed of today itself.

Learned Advocates for the parties heard at length merits on Old GA No. 829 of 2019 by treating Old GA No. 829 of 2019 as on the day's list, by consent of the parties.

As noted above, the suit is for declaration and for recovery of money. The plaintiff claims itself with the owner of the property. The plaintiff claims that, the plaintiff and the defendant entered into an agreement under which, the defendant was to be inducted as a licensee of the suit property after renovation being done. According to the plaintiff, the defendant did not pay the entirety of the money due to the plaintiff and did not enter into possession of the suit property. The plaintiff is entitled to claim recovery of money. On the apprehension expressed that, the defendant is likely to interfere with the possession of the suit property, an ad interim order of injunction was passed on August 6, 2019.

As noted above, the fact that, the plaintiff is the owner of the property is not contested. The defendant cannot interfere with the possession of the plaintiff. Therefore, it would be appropriate to confirm the interim order was passed on August 6, 2019.



Affidavit filed in Court including the affidavit in opposition affirmed by the defendant on October 1, 2019 in Old GA No. 829 of 2019 is taken on record.

IA No. GA 3 of 2020 (Old GA No. 156 of 2020) and Old GA No. 829 of 2019 in CS No. 53 of 2019 are disposed of accordingly.

(DEBANGSU BASAK, J.)

snn.