

OD-1

CS /197/2017
IN THE HIGH COURT AT CALCUTTA
Ordinary Original Writ Jurisdiction
ORIGINAL SIDE
(Via Video Conference)

MANGAL BUILDERS AND ENTERPRISE LTD.
Versus
CAMBAY INVESTMENTS CORPORATION LTD. & ANR.

BEFORE:
The Hon'ble JUSTICE RAVI KRISHAN KAPUR
Date : 9th February, 2021.

Appearance:-

*Mr.Subhojit Ghosh, Adv.
..for plaintiff*

*Mr.Probhakar Chowdhury, Adv.
..for Advocate Commissioner*

The Court : This matter has been mentioned at the instance of the plaintiff.

The suit premises is Premises no. 4, Fairlie Place, Kolkata – 700001. The suit premises comprises of a six storied building on land approximately measuring 1 bigha 5 kathas and 35 sq.ft.

The suit has been filed for partition. The sole plaintiff is a company and the two defendants are also corporate entities. In the suit, upon consent of the parties, a preliminary decree came to be passed on 10th January, 2020. There appears to be no other effective steps taken by the parties to this suit.

It is alleged in paragraph 10 of the plaint that the suit premises had been leased out to one Williamson Magor & Company Limited. It is also alleged in the plaint that the plaintiff is only in constructive possession of the suit premises. It appears from the plaint that neither the plaintiff nor the defendants are in actual physical possession of any portion of the suit premises.

The Advocate Commissioner is present. The plaintiff hands over a piece of paper to Court which purports to be a third meeting held on 28th January, 2021 wherein the Advocate Commissioner has alleged that he was obstructed by a representative of one Hemaraj Mahabir Prasad Ltd. The minutes are unsigned. The presence of all the parties including the defendants are recorded in the Minutes.

The submission made on behalf of the plaintiff and the Advocate Commissioner is that appropriate orders be passed enabling the Advocate Commissioner to go and survey the suit premises and appropriate directions be passed for his safety. In brief, the parties are seeking protective orders from this Court.

I have heard both the plaintiff and the Advocate Commissioner.

I am of the view that the procedure sought to be adopted by the plaintiff and the Advocate Commissioner is unknown to law. Such practice of orders being passed without there being a formal application has been repeatedly deprecated by all Courts including the Supreme Court. There is no formal application filed before me. I must be certain that this is not a collusive suit

which has been filed only to disrupt, intermeddle and interfere with the rights of third party occupants who are not parties to the suit.

I reiterate that neither the plaintiff nor the defendants are in actual physical possession of any portion of the suit premises. The persons or entities who are in actual physical possession of the suit premises is unknown to this Court. In the absence of any formal application, the oral prayer of both the plaintiff and the Advocate Commissioner is outrightly rejected.

The Advocate Commissioner and the plaintiff are granted liberty to file an appropriate application in accordance with law and after giving an appropriate notice to all third party occupants of the suit premises.

(RAVI KRISHAN KAPUR, J.)

D.Ghosh