

IA No. GA 1 of 2023
APOT No. 205 of 2023
with
EC No. 373 of 2022
IN THE HIGH COURT AT CALCUTTA
In appeal from its
ORDINARY ORIGINAL CIVIL JURISDICTION
CIVIL APPELLATE JURISDICTION

M/s. Nano Properties
Versus
Vishnu Narayan Kashyap & Anr.

Before:
The Hon'ble Justice I. P. MUKERJI
And
The Hon'ble Justice PRASENJIT BISWAS
Date: 2nd August 2023

Appearance:
Mr. Sakya Sen, Advocate
Mr. Arindam Paul, Advocate
Mr. Meghnad Dutta, Advocate
for the appellant

Mr. Utpal Bose, Sr. Advocate
Mr. Manik Das, Advocate
Ms. Madhupriya, Advocate
Mr. Aniruddha Sinha, Advocate
for the respondents

The Court: Order in terms of prayer (a) of the stay petition.

We admit the appeal.

We propose to hear out the appeal dispensing with all formalities.

Supplementary affidavit filed in court today on behalf of the appellant is accepted and taken on record.

Advocate-on-record for the appellant shall file an informal paper book in this court by 31st August 2023 serving a copy thereof upon the advocate-on-record for the respondents, at least seven days before the date of hearing of the appeal.

List the appeal for hearing on 14th September 2023.

This appeal is against an order dated 8th June 2023 passed by a learned single judge dismissing an application under section 47 of the Civil Procedure Code taken out by the appellant.

To put it very shortly, in a suit for eviction, in 2013 orders were passed by this court that by alleged consent of the parties conveyed by the learned counsel, the defendant in the suit would continue to enjoy the suit property on the terms and conditions recorded in the order. Reference may be made to the order dated 5th April 2013. However, after recording the alleged agreement between the parties as conveyed to the court by learned counsel, it went on to add “The parties are directed to file affidavits incorporating their consent and approval to this settlement by annexing a copy of the order to be part of the same. Such affidavits must be filed within two weeks from date”. This affidavit was never filed by the defendant.

The order dated 17th April 2013 without recording the consent of the parties sought to substitute Nano Properties in place of the original defendant with a direction that they would “clear off the arrear dues as directed by us in the order dated 5th April 2013”.

Mr. Sen, learned advocate representing the appellant Nano Properties submitted that no affidavit was filed on behalf of the defendant. Hence there was no valid consent decree in the eye of law. Secondly, his client Nano Properties was neither a party to the settlement nor a signatory to any terms. Neither had the appellant been substituted as a defendant in the suit.

On the other hand, Mr. Bose very strongly contended citing *Jineshwardas (D) by LRs. And Others v. Smt. Jagrani And Another* reported in AIR 2003 SC 4596 that the parties were bound by the settlement put forward by their learned counsel and recorded in the order of the division bench dated 5th April 2013. It was known to all that the appellant Nano Properties would step into the shoes of the

original defendant and for this reason they had been substituted as defendant by the order dated 17th April 2013. The record of the proceedings before the court would show that Nano Properties became bound by the consent decree.

All these contentions have to be gone into and adjudicated upon in the appeal.

As of now, the respondents are executing the judgment dated 5th April 2013 like a decree. In fact, a decree has been drawn up on the basis of the said judgment.

The appellant prays for stay of the execution thereof.

It is quite evident from the submissions made by learned counsel for the parties that the suit property is not in the possession of Nano Properties but in the possession of the Receiver and is vacant.

In the above facts and circumstances of the case, we discharge the Receiver and appoint Mr. Kalyan Chakraborty, Advocate and member of Bar Association (Mobile No. 9804523293) and Mr. Rajendra Banerjee, Advocate and member of Bar Association (Mobile No. 9674208341) as Joint Special Officers at an initial remuneration of 2000 GMs each to be paid by the respondents to take immediate physical possession of the suit property and hand over possession of the same to the respondents within two weeks of communication of this order. The outgoing Receiver shall make over possession of the suit property to the incoming Joint Special Officers.

The Officer-in-Charge of the local police station shall be present at the time of handing over of possession and ensure that such handing over of possession is made in a peaceful manner.

At the time of handing over of possession, if any part of the suit property is padlocked, the padlocks will be broken by the Joint Special Officers with the help of the police, if necessary.

The respondents shall not proceed with the execution application till the disposal of this appeal or until further orders whichever is earlier.

The warrant of arrest issued by an order dated 26th July 2023 need not be issued.

On the submission of Mr. Sen, we clarify that this order only binds the parties in this proceeding.

The stay application is disposed of.

As affidavits were not invited, the allegations contained therein are deemed not to have been admitted.

(I. P. MUKERJI, J.)

(PRASENJIT BISWAS, J.)

R. Bose