

IA No.GA 8 of 2023
In
CS 212 of 2010
IN THE HIGH COURT AT CALCUTTA
ORDINARY ORIGINAL CIVIL JURISDICTION
ORIGINAL SIDE

MRS. MALABIKA BHATTACHARYA
VS.
SHRI AMITAVA MUKHERJEE

BEFORE:
The Hon'ble JUSTICE ARINDAM MUKHERJEE
Date: 23rd June, 2023.

Mr. Sudip Deb, Mr. Riju Ghosh, Ms. Ipsita Ghosh, Advocates for
the defendant/petitioner.

Mr. Sanatan Ghosh, Mrs. Suvasree Ghose, Advocates for plaintiff.

The Court : This is an application for modification of a judgment and decree dated 17th December, 2019 made by the defendant in a partition suit.

The defendant was directed to hand over 40% of the third floor at premises no.2, Durga Charan Doctor Lane, P. O. – Taltala, Kolkata – 700 014 aggregating to an area more or less 796.40 sq. ft. allotted to the plaintiff within four months from the date of the judgment and decree. Four months have long expired. Several reasons have been put forth by the defendant in support of his failure to vacate the portion he was directed to do under the judgment and decree. Although pandemic intervened in between and the situation was not normal between 15th March, 2020 and 28th February,

2022 and that the outer limit of the time to vacate fell beyond 15th March, 2020 but that does not permit the defendant to hold on to the property even after one year from 1st March, 2022. The defendant's case is considered leniently in view of the pandemic. The defendant has actually overstayed for more than three years and this application has been made only on 8th May, 2023.

Considering these facts, the defendant is directed to file an undertaking in a form of an affidavit by 3rd July, 2023 stating therein that he shall quit, vacate and hand over possession of the 40% of the third floor as indicated by the decree on expiry of 30th September, 2023 with an advance copy to the plaintiff and the Commissioner of Partition. The defendant shall in the affidavit state that by 20th September, 2023 he will inform the plaintiff and the Commissioner of Partition in writing as to when on 1st October, 2023 the plaintiff and/or her representative and the Commissioner of Partition shall be present in the suit property to take vacant and khas possession of the portion allotted to the plaintiff under the decree.

Let this matter appear on 5th July, 2023.

(ARINDAM MUKHERJEE, J.)