

Asif Ali Vs. Sufia Khatoon

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Court : Kolkata

Decided On : Aug-13-2013

Judge : Girish Chandra Gupta

Appellant : Asif Ali

Respondent : Sufia Khatoon

Judgement :

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ORDER

SHEET G.A.No.2192 of 2013 APOT No.340 of 2013 CS No.283 of 2011 IN THE HIGH COURT AT CALCUTTA Civil Appellate Jurisdiction ORIGINAL SIDE ASIF ALI Versus SUFIA KHATOON BEFORE: The Hon'ble JUSTICE GIRISH CHANDRA GUPTA The Hon'ble JUSTICE TARUN KUMAR DAS Date :

13. h August, 2013.

Appearance: Mr.D.N.Sharma with Mr.Hemanta Kr.

Das And Mr.C.S.

Jha, Id.

Advocates for the appellant.

Mr.Hiranmoy Bhattacharjee, Mr.D.Mondal And Mr.Emon Bhattacharjee, Id.

Advocates For the respondent.

The Court :- The appeal is directed against an order dated 2nd July, 2013 passed by Sister Patherya,J dismissing an application for setting aside an ex-parte decree passed on 1st August, 2012 by Maharaj Sinha, J (as his Lordship then was).The undisputed facts of the case are as follows:The appellant entered into an agreement for sale on 29th January, 2008 in respect of a flat at a sum of Rs.16,15,000/-.

The appellant paid a sum of Rs.10 lac.

Possession of the flat was given to him.

The parties had agreed that the sale shall be concluded within 6 months.

Sale was obviously not concluded within the agreed time.

One of the reasons advanced by Mr.Majumder, learned Advocate appearing for the appellant/defendant is that the plaintiff-vendor had suppressed the fact that the flat in question was already mortgaged with HDFC Bank.

He added that the sale could not have been completed without redeeming the mortgage.

Be that as it may, the suit was decreed ex-parte directing the defendant/appellant to vacate the flat as also to pay a sum of Rs.8,20,500/- together with interest @12% p.a.and there was a further direction to pay mesne profit @Rs.1500/- per diem.

Cost was directed to be paid assessed at Rs.50,000/-.

Assuming everything in favour of the plaintiff he was entitled to a sum of Rs.6 lac in July, 2008.

He at the highest lost the benefit of a sum of Rs.6,15,000/- for a period of 5 years as on date.

Calculating interest @10% p.a. the plaintiff is entitled roughly to a sum of Rs.3,10,000/- on account of interest.

Ends of justice will be met if the defendant/appellant is directed to put in a sum of Rs.9,25,000/- which will take care of the entire claim of the plaintiff/respondent.

Accordingly, the appeal is disposed of by the following order:- In the Rs.9,25,000/- event within 3 the appellant months from pays date, a the sum of ex-parte decree shall stand set aside.

Possession of the appellant/defendant shall continue to remain with him so long as the suit is not finally decided.

The sum of Rs.9,25,000/ shall be deposited with the Registrar, Original Side.

He shall keep the same in Nationalized Bank permitted be to an interest and the withdrawn by bearing interest the account thereof plaintiff, in may if he a be so chooses.

This order is necessary to balance the equity.

The corpus shall, however, be subject to ultimate result of the suit.

The learned Trial Judge is requested to expedite the hearing of the suit as far as possible.

It is clarified that since ex parte decree has been set aside by us, the execution proceeding can no longer continue.

Needless to mention that views if any expressed herein are prima facie in nature.

Urgent xerox certified copy of this order, if applied for, be supplied to the parties subject to compliance with all requisite formalities.

(GIRISH CHANDRA GUPTA, J.) (TARUN KUMAR DAS, J.) dg/

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