

Appellant Vs. Respondent

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Court : Kolkata

Decided On : Jan-04-2013

Judge : Sanjib Banerjee

Appellant : Appellant

Respondent : Respondent

Judgement :

CA No.61 of 2012 CP No.91 of 1973 CA No.562 of 2012 IN THE HIGH COURT AT CALCUTTA Original Jurisdiction ORIGINAL SIDE In the matter of: NATABAR DUTTA PROPERTIES (P) LTD.(IN LIQN.) Appearance: Mr.P.K.Dutta, Sr.Adv.Mr.Dhruba Ghosh, Adv.Mr.Mainak Bose, Adv.Mr.Aniruddha Roy, Adv.Mr.S.K.Das, Adv.Mr.Jishnu Chowdhury, Adv.Mr.Kuldip Mullick, Adv.Mr.Rajesh Upadhyay, Adv.Ms.Smita Das De, Adv.Ms.Iti Dutta, Adv.BEFORE: The Hon'ble JUSTICE SANJIB BANERJEE Date : January 4, 2013.

The Court : The matter has been adjourned from time to time for sale of various properties of the company (in liquidation).The company was family run and owned and several heirs of the original contributories are represented.

One of the properties which was not occupied has been sold.

The other properties are occupied either by family members by virtue of orders passed by Court or as rank trespassers or by outsiders and family members as tenants or heirs of tenants.

Pitiable offers have been received for the sale of the properties at premises Nos.14A and 14B, Amritalal Bose Street, 235 Maharshi Debendra Road and 84A, Beniatola Street.

Inadequate offers may have come since portions of these properties are in occupation of tenants or contributories or trespassers. Ideally, the family members who are in occupation and who have given undertakings to vacate the premises when asked and the rank trespassers should be made to vacate the properties for the properties to fetch the best market price.

However, in view of the order dated July 25, 2012 passed by the appellate Court, one of the occupants has been permitted to remain in occupation of the property till such time that the relevant property is about to be made over by the official liquidator to the purchaser at the Court sale; and, others similarly placed seek the same indulgence.

There may be a considerable difference in the amount offered if a property is fully or partly vacant and if it is occupied.

In view of the order dated July 25, 2012 passed at the behest of Rama Dutta, others who are similarly placed have to be given the same latitude.

That would imply that even the trespassers and bare licencees, who have given undertakings to vacate the premises when called for, would have to be permitted to remain in occupation till the time comes for the official liquidator to hand over possession to the successful purchaser.

Understandably, several of the heirs of the contributories apprehend that this would result in depressed offers being received for the properties which would ultimately help those in wrongful occupation of portions thereof to obtain the properties at throwaway prices.

Pursuant to a previous order, all occupants at the several properties were given notices and apart from members of the Dutta family in occupation of portions of the properties, Tapan Kumar Dey and Shiv Sankar Dey, Ratna Debi Shaw and Sitaram Shaw, Rama Prakash Beel and Ashok Kumar Jain are also represented

and some of them claim to be tenants with the tenancies having been created prior to the company going into liquidation.

Three other family member occupants, Amit Kumar Dutta, Ashim Kumar Dutta and Rama Dutta, are also represented.

It would be best if a meeting of the heirs of the original contributories is convened to be held to ascertain the wishes of the majority as to how the properties of the company (in liquidation) should be dealt with.

This is necessary since there are no creditors of the company (in liquidation) and the sale proceeds would go to the contributories directly.

In the absence of a minimum level of agreement among the heirs of the contributories, the conduct of this sale would amount to the trial of several suits: first, to ascertain the rights of the several alleged tenants and the sundry other occupants before the properties are sold at their fair market value.

The appearing contributories should try and submit a common list of the heirs of the original contributories so that if a meeting is held to ascertain their wishes, the value of the votes of such heirs at the proposed meeting can be assessed.

Let the matter stand over for six weeks.

Until further order, all occupants will pay occupation charges, whether by way of rent or otherwise to the official liquidator without any equity being created in their favour.

However, the failure of any occupier, whether a licensee or tenant or a contributory, to pay the appropriate occupation charges, will entail serious consequences.

It will be open to all contributories, occupants and heirs of contributories to seek copies of rival pleadings on the usual terms. Urgent certified photocopies of this order, if applied for, be given to the parties subject to compliance with all requisite formalities.

(Sanjib Banerjee, J.) A/s.

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