

Appellant Vs. Respondent

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Court : Kolkata

Decided On : Aug-03-2012

Judge : Banerjee

Appellant : Appellant

Respondent : Respondent

Judgement :

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ORDER

SHEET ACO No.166 of 2012 APO No.155 of 2012 CP No.91 of 1973 IN THE HIGH COURT AT CALCUTTA Civil Appellate Jurisdiction ORIGINAL SIDE In the Matter of : Natabar Dutta Properties Pvt Ltd (In Liquidation.

RANJANA DUTTA -And ASHIM KUMAR DUTTA & ORS.BEFORE: The Hon'ble JUSTICE BANERJEE The Hon'ble JUSTICE SHUKLA KABIR (SINHA) Date :

3. d August, 2012.

Appearance: Mr.Ratnanko Banerjee, Advocate For the applicant.

Mr.Mainak Bose, Advocate For the appellant.

Ms.Smita Das Dey, Advocate For the Official Liquidator.

The Court :- This application is again a ploy to forestall and, if not possible, to delay the sale of the assets of the Company (In Liquidation).M/S.Natabar Dutta Properties Pvt Ltd (In Liquidation) is basically a property company.

The Official Liquidator is supposed to be in possession of all the assets.

With great difficulty, the learned Single Judge put up these properties for sale that litigation one after another.

gave rise to protracted The appellant approached us with grievances that her portion was being sold by the Official Liquidator.

We disposed of the appeal vide our judgment and order dated June 25, 2012.

While passing the said order we noticed, several contributories and/or members of the Dutta family were in permissive possession pursuant to order of the Court on the undertaking that they would vacate as and when asked for.

Various persons came in possession in couRs.of winding up.

While disposing of the appeal we once again asked the Official Liquidator to proceed with the sale with utmost expedition.

While doing so we recorded that the lawful tenants, who came in possession prior to the Company being sent in liquidation, may not be disturbed otherwise the Official Liquidator must try to sell the properties free from all encumbrances and he would venture for getting back possession from the permissive occupants who came in possession in couRs.of winding up and gave undertaking to this Court that they would vacate.

Our observation as contained in the said order is quoted below: In our view, the Official Liquidator must proceed with the sale and conclude the same at the earliest.

At the same time the Official Liquidator must see that nest possible price is fetched.

If any of the portion of the properties put up for sale is under occupation of a lawful tenant, whose tenancy was created much prior to the initiation of the winding up proceeding that tenancy may not be disturbed by the sale.

However, the persons, who took possession subsequent to or during the pendency of the winding up proceeding as well as after the order of winding up being passed, such possession would be subject to the licence being revoked by the Official Liquidator at any point of time.

In case of any such portion is put up for sale, vacant possession must be given to the purchaser by removing the occupant who took possessing after initiation of the winding up proceeding.

After we disposed of the appeal, one of the occupants claiming to be a member of Dutta family Smt.

Ratna Dutta, approached us for necessary clarification.

We dismissed the said application on July 25, 2012.

The present application is one of the like nature.

Here one Ram Prakash Beel, son of Late Murlidhar Beel, claiming to be the lawful tenant under the Company (In Liquidation) has come judgment up, and inter-alia, order dated praying June 25, for recall 2012 and, possible, for modification and/or clarification.

of our if not Ram Prakash claims that his father was a lawful tenant and he was residing with his father.

He has gas connection and telephone connection in his name and in the name of his wife.

He is residing there.

The Official Liquidator taking a cue from the judgment and order dated June 25, 2012 is trying to disturb his possession.

He refers to a letter dated July 11, 2012 written by the Official Liquidator asking him to vacate the premises in question.

We also find from the record that his father died in the year 2003.

He does not inform the Official Liquidator contemporaneously.

He claims that after about 5 years by a letter dated April 22, 2008 appearing at pages 25 and 26 of the petition informed the Official Liquidator and asked for mutation of his name in the records of the Official Liquidator.

The Official Liquidator immediately replied.

The Official Liquidator in his letter dated July 23, 2012 appearing at page 22 informed him that his father was a lawful tenant but there was no such record available in his office that Ram Prakash was substituted in place and stead of his deceased father.

Ms.Official Das Dey, Liquidator, learned Counsel however, admits appearing the for the typographical mistake crept in the said letter dated July 23, 2012 where the name of one Asok Kr.

Jain features.

Ms.Das Dey contends that it was a mistake.

Ram Prakash is not living at the said premises as per record of the Official Liquidator.

Mr.Ratnanko Banerji, learned Counsel appearing for the applicant submits that he was not heard while the appeal was disposed of by the said order dated June 25, 2012.

The Official Liquidator is disturbing his clients possession.

Hence such order should be recalled and/or modified and/or recalled accordingly.

According to him, he is a lawful tenant and his possession must not be disturbed.

We entertained an appeal filed by one Ranjana Dutta for a specific grievance wherein Ram Prakash did not feature.

Hence he could not be heard.

By the said order we only asked the Official Liquidator to expedite the process of sale.

While doing so we once again reminded the Official Liquidator that he must take steps to remove the permissive occupants, who already gave undertaking to the Court to vacate the premises in question as and when asked for.

We also reminded the Official Liquidator about the statutory protection which a lawful tenant enjoyed in respect of a Company (In Liquidation). We did not give any specific direction or mandate to the Official Liquidator by the said order save and except asking him to expedite the sale as per the direction of the learned Company Judge.

We fail to understand how we could be bothered with this type of application one after the other in a disposed of appeal.

The application is hereby dismissed.

The applicant must pay cost of this application assessed at Rs.5000/- to the Official Liquidator within one week from date.

There will be no order as to costs.

Urgent xerox certified copy of this order, if applied for, be given to the parties upon compliance of all formalities.

(BANERJEE, J.) (SHUKLA KABIR (SINHA).J.) dg/

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