

In Re: Arun Kumar Ghosh and ors.

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Court : Kolkata

Decided On : Sep-13-1991

Reported in : (1992)1CALLT207(HC),96CWN458

Judge : Samir Kumar Mookherjee and ;Abani Mohan Sinha, JJ.

Acts : [Arbitration Act, 1940](#) - Section 41; ;Code of Civil Procedure (CPC) - Section 115 - Orders 39 and 40

Appellant : In Re: Arun Kumar Ghosh and ors.

Advocate for Def. : Daipayan Mitra, ;Aloke Banerjee and ;Durgadas Sen, Advs.

Advocate for Pet/Ap. : Sudhis Dasgupta, ;Subhro Kamal Mukherjee and ;Debasish Roy, Advs.

Judgement :

Samir Kumar Mookherjee, J.

1. The present Revisional application arises out of orders rejecting the plaintiffs application for appointment of Receiver and Injunction as also an application for manda-injunction. The plaintiffs and the defendants in the suit are owners and developers/promoters respectively of the disputed property at 297, Jodhpur Park, Calcutta.

2. The agreement dt. 16-9-87 between the said parties provided, in substance, for delivery of flats to the plaintiffs, rights of the defendants to sell out the other flats in the said premises and to recover moneys on the basis of the agreement from the plaintiffs according to the measurement of the flats delivered to them. The agreement contains an arbitration clause and the suit in question filed Under Section 20 of the Arbitration Act for reference of the disputes between the parties to the arbitration. During pendency of the said application before the trial court an application Under Section 41 of the Arbitration Act had been made for the aforesaid reliefs. The trial court disposed of the said two applications by the impugned orders, inter alia, directing the maintenance of status quo as regards the properties which stood modified by the impugned order of the lower appellate court by imposition of an injunction restraining the parties from changing the nature and character of the suit property. The present revisional applications are at the instance of the plaintiffs and are directed against the said two orders.

3. It is an admitted position that the plaintiffs have been possessing one flat and are claiming two more flats in terms of the agreement with the defendants/opposite parties, who are the developers. The defendants, however, have resisted the claim of the plaintiffs on the ground of non-payment of money in terms of the agreement between the parties. In course of the hearing of the revisional applications, we have been informed that statements of claim have been filed before the Arbitrator and on behalf of the opposite parties it has been contended that such claims are merely financial claims and do not have anything to do with possession of the flats in question. On that basis, on behalf of the said opposite parties, the prayer for interim reliefs in terms of Section 41 of the Arbitration Act as made before Court have been sought to be resisted on the ground that the possession now claimed is not the subject matter of reference before the Arbitrator and as such the Court below and this Court have no jurisdiction to grant prayers for injunction or receiver relating to or over the disputed flats, such relief being not in aid of substantive relief in the arbitration proceeding.

4. We, however, are not inclined to accept the propriety of the aforesaid submission. Section 41(b) of the Arbitration Act vests the Court with jurisdiction to make orders in respect of any of the matters set out in the second schedule for the

purpose of and in relation to arbitration proceedings. As per Clause (4) of the second schedule, interim injunction and appointment of Receiver are some of such matters. Power of the Court in seisin of proceeding under the Arbitration Act to grant injunction or make orders for appointment of Receiver cannot, therefore, be disputed. On the basis of the ratio propounded in the decision of the Hon'ble Supreme Court in the case of H.M. Kamaluddin Ansari & Co. v. Union of India and Ors. reported in : [1983]3SCR607 , the orders Under Section 41 Clause (b) must relate to the 'subject matter of the Arbitration proceeding', as distinct from subject matter of reference on which emphasis has been laid on behalf of opposite parties to justify their resistance to the plaintiff's prayers, which must mean the disputes referred to arbitration, 'subject matter' as stated in the Shorter Oxford English Dictionary, Third Edition, means 'A thing affording matter for action of a specified kind'. In other words, in the present context, it means a matter or thing in relation to which or in connection wherewith the arbitration proceeding arises. The disputes which constitute the subject matter of reference must relate to the said subject matter of arbitration proceeding. Applying such ratio, the flats in the present case over which the interim orders have been asked for, constitute the subject matter of arbitration proceeding. The Court, therefore, has full power to make orders relating to injunction or Receiver over such flats. Since in the instant case, on conclusion of the arbitration proceedings necessity may arise for the court to make orders for handing over of the possession of the flats such possession must remain with the court till the conclusion of the arbitration proceedings. The provisions of Order XL Rule 1 of the Code of Civil Procedure apply to the present proceedings in terms of Clause (a) of Section 41 of the Arbitration Act and we find, on the materials in the present case, and for the reasons as mentioned hereinabove that it is just and convenient to appoint Receiver for holding possession of the flats on behalf of the Court till the disposal of the flats on behalf of the Court till the disposal of the arbitration proceedings. For the aforesaid reasons again, the argument of Mr. Chowdhury to the effect that the interim relief is not in aid of final relief becomes unsustainable. The case cited by him viz. Orissa Mining Corporation v. Rawley, reported in : [1978]1SCR285 becomes distinguishable on facts as the reference was made by Court in specific disputes and not in general terms.

5. In disposing of the two applications, the Trial Court overlooked the above aspect of the matters and the impugned order thus passed by it suffers from irregular exercise of jurisdiction.

6. We, accordingly, appoint Shri Ujjal Lala, a learned Advocate of this Court, as Receiver to take over possession of the two flats in question and hold the same subject to the directions of the Court to be given on conclusion of the arbitration proceeding. The Receiver will be entitled to put his own padlock and we direct the opposite parties to hand over possession of the said two flats to the Receiver. The remuneration of the Receiver is fixed at 15 GMS. per month which has been agreed to be borne by the Revisional petitioners for the present and such payments by them will abide by the results of the arbitration proceeding. The appointment of the Receiver will be deemed to have been made by the Court below and for any direction necessary the Receiver will be entitled to approach the said Court.

7. The revisional applications are thus disposed of. The impugned orders are set aside without any order as to costs. The interim orders granted by us on 12.9.90, 7.12.90 and 21.12.90 would continue till a month from this date to enable the parties to take appropriate steps. Other interim orders are vacated.

8. The application moved on behalf of the occupiers of other flats by Mr. Bhaskar Sen is disposed of without any order as in view of the order passed as above, the prayer for addition becomes necessary.

There will be no order as to costs.

9. This order will be without prejudice to the rights and contentions of the parties in the arbitration proceeding as also in the reference before the Arbitrator.

10. After the judgment is delivered a prayer is made on behalf of the parties that specific liberty should be given to the Calcutta Electric Supply Corporation for dealing with the applications made for supply to the different flats by the respective occupiers thereof and we, accordingly, record that the Calcutta Electric Supply Corporation will have full liberty to deal with the applications for connections to

different flats made or to be made by the respective occupiers according to law. On behalf of Mr. Chowdhury's clients it is stated before us, after the judgment is delivered, that since the agents and servants of the Promoters/developers are occupying two concerned flats, possession of which is to be handed over to the Receiver, some time should be granted to enable vacant possession of the said flats to be handed over in terms of this direction.

11. We, accordingly, grant three days' time from tomorrow within which possession has to be handed over to the Receiver in terms of our present directions.

12. The Receiver will act on a plain copy of the operative portion of this order countersigned by the Assistant Registrar (Court). Let Xerox copies of this order be delivered to the learned advocates for the parties on their usual undertakings to apply for and obtain the urgent certified copies.

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