

(2014) 03 CAL CK 0134

Calcutta High Court

Case No: G.A. No. 266 of 2014 and C.S. No. 297 of 1989

Rajeev Daga and
Another

APPELLANT

Vs

Ambalal Sarabhai
Enterprise Ltd.

RESPONDENT

Date of Decision: March 31, 2014

Hon'ble Judges: Debabrata Mookerjee, J

Bench: Single Bench

Advocate: Jishnu Saha, Ms. Sulagna Mukherjee and Ms. Surabhi Banerjee, Advocate for the Appellant; Swarnendu Ghosh and Ms. Tapati Chatterjee, Advocate for the Respondent

Judgement

Debangsu Basak, J.

In a suit for possession and mesne profit, a Special Officer was appointed by the Order dated October 20, 1993. The Special Officer held a meeting on October 21, 1993 and made an inventory. The minutes of the meeting was at page 14 to 16 of the application. The suit was decreed in favour of the plaintiffs on July 15, 2013. The appeal carried therefrom was dismissed on December 5, 2013.

2. It was submitted on behalf of the parties that, the SLP against the judgment and order dated December 5, 2013 was dismissed by the Hon"ble Supreme Court of India.

3. The plaintiff made the present application seeking discharge of the Special Officer appointed by the Order dated October 20, 1993 and a direction upon such a Special Officer to hand over physical possession of the suit premises to the plaintiffs by making over the keys to the padlock put by the Special Officer at the entrance of the suit premises and making over possession of the two car parking spaces as mentioned in Schedule "A" of the plaint.

4. It was submitted on behalf of the plaintiffs that, since the decree attained finality the plaintiffs were entitled to the relief as sought for. The Special Officer was

appointed by this Hon"ble Court. It was for this Hon"ble Court to discharge the Special Officer appointed. The consequential directions as sought for by the plaintiffs were required to complete the discharge of the Special Officer appointed.

5. On behalf of the defendants it was submitted that, the plaintiffs were required to put the decree into execution. The plaintiffs were not entitled to the relief as sought for. This Court ought not to grant the relief as prayed for since the same would tantamount to executing the decree. It was submitted that, materials belonging to the defendants were lying under the custody of the Special Officer and should the Special Officer be discharged and the reliefs sought for be granted in such event the Special Officer should be directed to make over the materials belonging to the defendants.

6. On behalf of the plaintiffs it was submitted that, the defendants may be allowed to remove the materials and suitable directions to such effect be given to the Special Officer.

7. I considered the application and the affidavits used by the parties. I have also considered the submissions made by the respective parties. The Special Officer was appointed by this Hon"ble Court by the Order dated October 20, 1993. Acting in terms of the Order dated October 20, 1993 the Special Officer took possession of the suit premises on October 21, 1993. The decree dated July 15, 2013 has attained finality. There was no requirement of continuing with the Special Officer after the decree. The decree did not discharge the Special Officer appointed. No order was shown that discharged the Special Officer. This Court, therefore, retained the jurisdiction to discharge the Special Officer as it appointed the Special Officer.

8. In order to render the discharge of the Special Officer complete, it was required that the Special Officer should make over possession of such of the properties belonging to the parties to such respective parties as she took possession of. In such circumstances, the Special Officer is directed to hand over physical possession of the suit premises to the plaintiffs by making over to the plaintiffs the keys to be padlock put by her at the entrance of the suit premises. The Special Officer is also directed to make over possession of the two car parking space as mentioned in Schedule "A" to the plaint to the plaintiffs. The Special Officer will also make over possession of the materials belonging to the defendants as inventorized on October 21, 1993 to the defendants. The Special Officer will carry out such exercise within a fortnight from the date of communication of the order to her. The Special Officer will be paid an additional remuneration of Rs. 20,000/- by the plaintiffs. The plaintiffs will pay the remuneration to the Special Officer simultaneously with the service of the copy of this order on her. Upon the Special Officer making over possession as aforesaid to the respective parties she will stand discharged without any requirement of filing accounts. G.A. No. 266 of 2014 is disposed of. There will be no order as to costs.