
(2018) 09 CAL CK 0083

Calcutta High Court

Case No: Appeal From Order No. 253, 255 of 2018, GA No.2441, 2491, 2515 of 2018, Civil
Suit No.244 of 2016

Manglahat Construction
And Builders Pvt. Ltd.

APPELLANT

Vs

Gopi Das Mimani & Ors

RESPONDENT

Date of Decision: Sept. 28, 2018

Hon'ble Judges: Sanjib Banerjee, J; Abhijit Gangopadhyay, J

Bench: Division Bench

Advocate: Joydeep Kar, Debnath Ghose, Tapan Kr. Mitra, A. Pandey, K.R. Thakkar, Chayan Gupta, M.M. Chandra, S. Ray, S.N. Mitra, S. Sarkar, A. Kanodia, Soumabho Ghose, N. Barlia, Suman Dutta, P. Naskar

Final Decision: Disposed Off

Judgement

The Court : The two appeals are directed against an order of February 5, 2018 and an order of July 25, 2018 passed in a suit for specific performance

of an oral agreement for sale of an immovable property. The matter pertains to the Manglahat in Howrah. The respondent nos.1 to 4 herein are the

plaintiffs who claim that they have an agreement with the family of Daws of 1987 which is evidenced by some correspondence exchanged between

the parties. The agreed price was Rs.1.63 crore. Pursuant to an order in a different set of proceedings, the plaintiffs in the present suit have kept such

money deposited in this Court.

By the order impugned in the first of these appeals, an earlier order of November 13, 2017 was confirmed since the defendants, particularly, the

defendant no.8, failed to file any affidavit despite the initial directions and subsequent extension. The order impugned records that the matter was

mentioned on behalf of the plaintiffs upon notice to the parties, but the defendants do not appear to have responded to such notice. In such

circumstances, the interlocutory Court treated the interlocutory motion as an unopposed adjourned motion and confirmed the order of November 13,

2017 that had earlier been passed on the application.

It also appears from the order dated November 13, 2017 that such order was also passed in a default scenario upon the defendant no.8 not filing its

affidavit-in-opposition despite an extension. Indeed, the order dated November 13, 2017 also recorded that if no affidavit was filed despite the

extension of the time granted by such order, “the matter shall be treated as an unopposed motion.” The order dated February 5, 2018 impugned

herein was merely a consequential order upon the defendants, particularly, the defendant no.8, not filing their affidavits-in-opposition to the relevant

application. The order dated February 13, 2017 further reflects that an ad interim order may have been declined when the application was first moved

and directions were issued for filing affidavits; but upon such affidavits not being filed for a considerable period of time despite the initial directions and

the subsequent extension, an order of injunction in terms of prayer (a) of the application was passed in default.

There is a delay of about 290 days in preferring the appeal against the order dated February 5, 2018. Though the plaintiffs ascribe motives to the

belated filing of such appeal, the ostensible reason disclosed is that in course of the appeal from the subsequent order being filed, the appellant herein

was advised to prefer an appeal against the order by which the injunction was confirmed.

Without being hypertechnical, in view of the grounds shown, the delay in preferring such appeal is condoned and the appeal is taken on record.

However, considering the conduct of the appellant before the interlocutory Court as evident from the order impugned dated February 5, 2018, and the

previous order of November 13, 2017, no question arises of interfering with the order impugned at this stage. The other order challenged is of July 25,

2018 by which the defendants were restrained from collecting any occupation charges from the occupants of the market at Manglahat and a special

officer was appointed to inspect and make an inventory of the premises described in Schedule B to the application and prepare a list of the existing

occupants with full particulars thereof.

The appellant claims that such order disturbing a system that has been in vogue for a considerable period of time was unwarranted and, at any rate,

has no nexus with the ultimate relief of specific performance as claimed in the suit. The appellant claims to be the assignee of the transferee of the

property from the Daws. The transfer was apparently made by the Daws pursuant to an agreement to sell of the year 1996 between the Daws and

the defendant no.6. The plaintiffs say that there was no agreement for sale between the Daws and the defendant no.6 as no such agreement was

brought to the notice of the Supreme Court when an order was passed on July 19, 1997 by which the parties to the relevant proceedings were

restrained from creating any third party rights in respect of the same property. The plaintiffs also claim that the subsequent purported transfer by the

Daws in favour of the defendant no.6 was contrary to a subsisting order and, as such, void.

There are several hurdles that the plaintiffs need to cross before the plaintiffs obtain the relief of specific performance, if at all. There are these

conveyances in favour of the nominees of the defendant no.6 and the subsequent assignment in favour of the present appellant and the defendant

no.8. Since the order of injunction as confirmed by the interlocutory Court's order of February 5, 2018 is left undisturbed, the only question is

whether at the initial stage of the subsequent application, the interlocutory Court should have stopped the present claimants to the property from

receiving the collections therefrom. The application is pending and has not been finally pronounced upon.

In the circumstances, it may be more appropriate to not disturb the special officer or whatever has been required by the order dated July 25, 2018 of

the special officer. Such order impugned of July 25, 2018 is only marginally modified by directing the special officer to make over the collections as

obtained from the occupants at the Manglahat market to the present appellant and the defendant no.8 in equal share. Till the relevant application is

finally disposed of, only the Special Officer will make the collections and make over the same in equal measure to the appellant and the defendant no.8

upon maintaining proper accounts.

However, nothing in this order will affect the final hearing of GA No.1746 of 2018 which is pending before the interlocutory Court. APO No.253 of

2018 with GA No.2441 of 2018 and APO No.255 of 2018 with GA No.2515 of 2018 and GA No.2491 of 2018 are disposed of as above. There will

be no order as to costs. Urgent certified website copies of this order, if applied for, be supplied to the parties subject to compliance with all requisite

formalities.