

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
ORIGINAL SIDE

APOT/362/2024
WITH
CS/26/2021
IA NO:GA/1/2024

MR. PROJAY SINGHA ROY
VS
RAJASTHAN FERTILIZERS & CHEMICAL CORPORATION LIMITED

BEFORE:

The Hon'ble JUSTICE JOYMALYA BAGCHI
AND

The Hon'ble JUSTICE GAURANG KANTH

Date : NOVEMBER 22, 2024.

Appearance:

Mr. Arindam Chattopadhyay, Adv.

Mr. Soumya Ray, Adv.

Mr. Soumik Dey, Adv.

Ms. Anweshha Saha, Adv.

Mr. Pramit Panda, Adv.

.....for the applicant/ appellant/ contemnor

Ms. Urmila Chakraborty, Adv.

Ms. Paramita Banerjee, Adv.

Ms. S.Paul, Adv.

Mr. Tamogna Chattopadhyay, Adv.

...for respondent.

THE COURT: The appellant contemnor No.1 has filed the appeal against judgment and order dated 18th September 2024 whereby the said contemnor and another were produced under arrest and they were given liberty to take necessary instructions with regard to the alleged dues payable by them.

Thrust of the challenge to the order is that the suit for eviction and mesne profits has since been decreed and an appeal is pending. Once decree has been passed, the interim order whose alleged violation had given rise to the contempt proceeding, no longer survives. Hence, the contempt proceeding is wholly without jurisdiction and the direction to take instructions for payment of the alleged dues was illegal.

Brief conspectus of facts giving rise to the present appeal are as follows:

A suit for eviction and mesne profits was instituted against the appellant's firm. In GA/2/2022, the contemnors gave an undertaking to pay occupational charges since April 2020 till April 2022 in twelve equal monthly installments, the first of which was to commence from May 2022. The undertaking was recorded in the order dated May 6, 2022 as follows:

“Without prejudice to the rights and contentions of the parties, the defendant undertakes to pay a sum of Rs.1,25,000/- (alongwith GST) on account of occupational charges of the suit premises to the petitioner till the pendency of this application.

Insofar as the arrear occupational charges are concerned it is submitted by the defendant that the last paid occupational charges was till March, 2020. The defendant undertakes to pay the arrear occupational charges since April 2020 till April 2022 in twelve equal monthly installments the first of which shall commence from May 2022.

Let this matter (sic) appear in the monthly list of June 2022. Liberty is granted to the petitioner to mention this matter in case of default of any one of the installments.”

The contemnors did not make payment in terms of the undertaking. On the contrary, they took out an application for modification of the aforesaid order on the ground of financial crisis. The application was dismissed on 29th August 2022. Thereafter, the contemnors partly complied with the undertaking and made some payments. As the entire dues had not been paid as per the undertaking, the respondent/plaintiff instituted the contempt proceeding.

In spite of service upon the contemnors, they did not enter appearance in the contempt proceeding and warrant of arrest was issued on 24th January 2024. One of the contemnors was produced under arrest and the appellant appeared before the Court. They gave a further undertaking on 14th December 2023. Thereafter they again adopted evasive and dilatory tactics to delay the matter and again by order dated 12th August 2024, warrants of arrest were issued. Pursuant to this order, both the contemnors were arrested and produced before the Hon'ble Single Judge. By the impugned order dated 18th September 2024, they were directed to take instructions to pay the dues.

During the pendency of the contempt proceeding, eviction decree came to be passed which has been challenged in appeal.

The appellant/applicant contends, the direction for payment of alleged dues is illegal as the interim order dated 6th May 2022 has merged with the final decree.

We are unable to accept this proposition. The suit had been filed for eviction and mesne profits. It had been partly decreed. Though eviction decree was passed, the suit is pending with regard to mesne profits. The interim order passed in GA/2/2022, therefore, survives.

That apart, contempt proceeding has been instituted to enforce an undertaking given by the contemnors in GA/2/2022. Enforcement of an undertaking given by a litigant would continue notwithstanding disposal of a matter till the undertaking is discharged.

Accordingly, we are of the opinion there is no jurisdictional error in continuing the contempt proceeding against the appellant and the other contemnor.

The appeal is dismissed. Connected application stands disposed of.

(JOYMALYA BAGCHI, J.)

(GAURANG KANTH, J.)