

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE

07.10.2015

RVW No. 240 of 2015

Smt. Jaya Sarkar

V.

Smt. Tanushree Sarkar

Mr. Utpal Majmdar

Mr. Sanjay Bose

Mr. Tapati Chatterjee

...for the appellant/applicant

Mr. Arup Banerjee

...for the respondent

In this application under Order XLVI of the Code of Civil Procedure, 1908 the appellant, in the second appeal has prayed for review of the order dated September 3, 2015 passed by this Court in her application being C.A.N. no. 8970 of 2015 filed in the second appeal.

The appellant petitioner filed the above second appeal against the decree for eviction passed by the lower appellate Court, affirming the judgment and decree for eviction passed against her by the trial Court. On August 22, 2013 the Division Bench of this Court admitted the second appeal. In an application filed by the appellant petitioner being, CAN 8543 of 2012, praying for stay of the execution proceeding filed by the respondent plaintiff, on

December 23, 2014 a learned Single Judge of this Court passed an order directing unconditional stay of execution proceeding. Thereafter, during the pendency of the stay application filed by the appellant petitioner, the respondent plaintiff filed an application being CAN no. 11228 of 2013 praying for a direction upon the appellant petitioner to pay occupation charges in respect of the suit property at the market rate as a condition for obtaining stay of execution of the eviction decree.

By an order dated May 7, 2015 this Court disposed of both the applications, being CAN 8543 of 2013 and CAN 11228 of 2013, by directing the appellant petitioner to pay occupation charges at the rate of Rs. 15,000/- per month to the respondent together with other monthly charges of Rs. 3,000/- to the Society of the building from August 2012, that is, after the lower appellant Court decree dated July 25, 2012. So far as payment of the arrear occupation charges of Rs. 4,95,000/-, the appellant petitioner was granted liberty to pay the same to the respondent by eight equal monthly installments of Rs. 61,875 from the month of June 2015. The appellant petitioner was further directed to pay the monthly occupation charges of Rs. 15,000/- to the respondent and Rs. 3,000/- per month to the society from the month of May 2015. By the said order, the appellant petitioner was specifically directed that she has to pay the monthly installment of arrears occupation charges Rs. 61,875/- and the current monthly occupation charge

of Rs. 15,000/- to the respondent, through her bank account within the tenth day of each month.

In the said order, it was made clear that in the event of any default on the part of the appellant to deposit any of the monthly installments of Rs. 61,875/- each or the monthly occupation charges of Rs. 15,000/- for any month as directed above, the interim order passed in the matter shall stand automatically vacated without any reference to this Court. The respondent informed the appellant petitioner of the particulars of her bank account, maintained with the Axis Bank.

On September 1, 2015 the appellant petitioner filed an application being CAN 8970 of 2015 stating that there was a delay on her part to pay the monthly installment of arrear occupation charges of Rs. 61,875/- together with the monthly occupation charges of Rs. 15,000/- property for the month of August, 2015, as there was a mistake on the part of the caretaker whom she instructed to deposit the two cheques both dated August 8, 2015 drawn on Axis Bank drawn on Axis Bank for Rs. 61,875/- and Rs. 15,000/- respectively, in the bank account of the appellant, maintained with the Axis Bank. In the said application the appellant petitioner admitted her obligation to pay the said monthly installment for arrear occupation charges of Rs. 61,875 and current occupation charges for the month of August, within August 10, 2015. In the said application, the appellant petitioner

prayed for condonation of delay in depositing the monthly installment of arrear occupation charges and occupation charges for the month of August, 2015.

On September 3, 2015 when the said application being CAN 8970 of 2015 was taken up for hearing a submission was made on behalf of the appellant petitioner in support of her prayer, that on August 18, 2015 she deposited the two cheques amount to Rs. 61,875/- and Rs. 15,000/- respectively with the bank account of the respondent and the respondent accepted the said payment made on August 18, 2015. However, the learned counsel appearing for the respondent made a submission that since no payment was received from the appellant for the month of August, 2015 till August 10, 2015 the respondent filed an application before the executing Court to proceed with the execution application and it was only after the receipt of the written objection filed by the appellant in the execution case, the respondent came to know the belated deposit of the said sum of Rs. 61,875/- and Rs. 15,000/- respectively on August 18, 2015 and by a cheque dated August 29, 2015 the respondent sent back the sum of Rs. 76,875/- to the appellant by post. In spite of such submission counsel appearing for the appellant petitioner submitted that the appellant has not received any cheque from the respondent.

Having considered the facts and circumstance of the case, by an order dated September 3, 2015 this Court by reasoned order

rejected the said application of the appellant petitioner being CAN 8970 of 2015. The appellant petitioner challenged the said order dated September 3, 2015 by filing a Special Leave Petition before the Hon'ble Supreme Court of India.

By an order dated September 24, 2015 the Hon'ble Supreme Court of India rejected the said Special Leave Petition on the ground that Their Lordships did not find any reason to interfere with the impugned order passed by this Court.

Mr. Utpal Majumdar, learned advocate appearing in support of the application submitted that the instant review application under Order XLVII of the Code of Civil Procedure has been filed in view of the leave granted by the Hon'ble Supreme Court of India by the order dated September 24, 2015. Mr. Majumdar placed reliance on the order dated September 24, 2015 passed by the Hon'ble Supreme Court where the Hon'ble Court observed that if the conditional order of stay has already been complied with which was said to have not considered by the High Court, the petitioner is given liberty to approach the High Court. He placed reliance on the three decisions of the Hon'ble Supreme Court in the cases of Executive Engineer, PWD, Bathinda v. Balraj Kumar Bansal, reported in (2005) 12 SCC 460, Surjit Singh v. Nanak Singh, reported in (2009) 14 SCC 587, Gurinder Singh & Ors. V. Harmala Kaur & Ors. Reported in (1982) 2 SCC 54 and urged that this Court should condone the delay in depositing the monthly

installment of arrear occupation charges and monthly occupation charges by the appellant petitioner on August 18, 2015. He further submitted that the appellant petitioner has deposited the monthly installment of arrear occupation charges and monthly occupation charges for the month of September with the bank account of the respondent within the stipulated time of the tenth day of September 2015. On these submissions Mr. Majumdar submitted that this Court should review the order dated September 3, 2015.

Per contra, Mr. Banerjee appearing for the respondent landlord submitted that the grounds of review mentioned in the memorandum of review by the appellant, are no grounds in law for review of the order dated September 3, 2014 passed by this Court. He further produced an envelope sent by the respondent to the appellant petitioner, which according to him, contains the cheque of Rs. 76,875/-, by registered post with acknowledge due but, the postal department has returned the said envelope with an Endorsement "Information served but not claimed (NC)". He further produced the cheque dated September 30, 2015 for Rs. 76,875/- issued in favour of the appellant as refund of the monthly installment of arrear occupation charges and the current occupation charges, for the month of September, 2015 deposited in the bank account of the respondent landlord.

I have considered the submissions of both Mr. Majumdar and Mr. Banerjee appearing for the respective parties. The order

dated September 3, 2015 passed by this Court was a reasoned order and the Hon'ble Supreme Court has dismissed the Special Leave Petition against such order with the following observation :-

“Having heard learned counsel for the petitioner and perused the record, we do not find any reason to interfere with the impugned order passed by the High Court. Accordingly, the special leave petition is dismissed.

However, if the conditional order of stay has already been complied with which was said to have not considered by the High Court, the petitioner is given liberty to approach the High Court.

As a sequel to the above, interlocutory application for exemption from filing certified copy of the impugned order is disposed of.”

It is the well settled principle of law that if, an order passed by this Court is challenged before the Supreme Court by filing a Special Leave Petition and the Hon'ble Supreme Court dismisses such Special Leave Petition with the finding that there Lordships have not found any merit in the Special Leave Petition, the order of this Court merges with the order of the Hon'ble Supreme Court and this Court cannot entertain any application for review under Order XLII of the Code of Civil Procedure, 1908. This view is fortified by the decisions of the Hon'ble Supreme Court in the cases of State of Maharashtra and Anr. V. Prabhakar Bhikaji Ingle,

reported in (1996) 3 SCC 463 and Sree Narayana Dharmasanghona Trust v. Swami Prakasananda, reported in (1997) 6 SCC 78.

From the said order dated September 3, 2015 it appears that while passing the said order, this Court have considered the submissions made by the counsel on behalf of the appellant petitioner that the said sum of Rs. 61,875/- and Rs. 15,000/- were deposited with the bank account of the respondent on August 18, 2015 as also the submission of the respondent about her attempt to return of the said sum to the appellant petitioner and the refusal of the appellant petitioner to accept the said cheque.

The order dated May 07, 2015 specifically directed that in the event of any failure on the part of the appellant petitioner to deposit the monthly installment of arrear occupation charges and current monthly occupation charges within the tenth day of the month, the interim order of stay of the execution proceeding shall stand automatically vacated. The appellant petitioner has admitted her failure to comply with the said conditional order of stay and all these facts are recorded and considered in the said order dated September 3, 2015.

The payment of the arrear occupation charges and monthly occupation charges by the appellant petitioner for the month of

September was before passing of the order dated September 24, 2009.

It is further the settled law, that a review application cannot be maintained for re-hearing of the matter afresh. So far as the decision of the Supreme Court cited by Mr. Majumdar on behalf of the appellant petitioner, in the cases of Gurinder Singh (supra), Executive Engineer, PWS (Supra) and Surjit Singh (supra), I am of the considered view that at this stage, after the dismissal of the Special Leave Petition by the Supreme Court against the order dated September 3, 2015 there is no scope to reconsider the same prayer of the appellant/petitioner which was rejected by the order dated September 3, 2015 and as such none of the said decisions of the Supreme Court has application in this case for entertaining this review application under Order XLVII of the Code.

For all the foregoing reasons, I do not find any merit in the review application being RVW no. 240 of 2015 and the same stands rejected. Since the review application itself is dismissed, there is no scope to pass any order in this application being CAN 10155 of 2015 and the same also stands dismissed.

However, there shall be no order as to costs.

Let, a plain copy of this order duly countersigned by the Assistant Registrar (Court) be made available to the respective parties on usual undertaking.

(Ashis Kumar Chakraborty, J)

But Supreme Court Observed Otherwise

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (C) No(s). 34853/2015

(Arising out of impugned final judgment and order dated 07/10/2015
in RVW No. 240/2015 passed by the High Court Of Calcutta)

JAYA SARKAR

Petitioner(s)

VERSUS

TANUSREE SARKAR

Respondent(s)

(with appln. (s) for exemption from filing c/c of the impugned
judgment and interim relief and office report)

Date : 16/12/2015 This petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE M.Y. EQBAL

HON'BLE MR. JUSTICE C. NAGAPPAN

For Petitioner(s)

Mr. Utpal Majumdar, Adv.
Ms. Ranjeeta Rohtagi, Adv.
Mr. M. Thangathurai, Adv.
Ms. Jaya Khanna, Adv.

For Respondent(s)

Mr. S.S. Sharangi, Adv.
Dr. Sumant Bhardwaj, Adv.
Ms. Mridula Ray Bharadwaj, Adv.UPON hearing the counsel the Court made the following
O R D E RExemption from filing C/C of the impugned judgment is
allowed.After hearing learned counsel for the parties, we do
not find any reason to interfere with the impugned order. The
special leave petition is dismissed.

However, we request the High Court to hear and

Signature Not Verified
Digitally signed by
Sukhbir Paul
Date: 2016.12.17
14:54:28 IST
Reason:

dispose of the second appeal within three months from today.

Till then, the Execution Case shall remain stayed.

It goes without saying that till the second appeal is

decided by the High Court, the petitioner shall continue to pay the rent.

[INDU POKHRIYAL]
COURT MASTER

[SUKHBIR PAUL KAUR]
A.R.-CUM-P.S.