

Calcutta High Court
Calcutta High Court
Indu Kocher & Ors vs Rajeev Maheswari & Ors on 11 January, 2011
Author: I. P. Mukerji
TA No.4 of 2011

With

AP No.61 of 2010

IN THE HIGH COURT AT CALCUTTA

ORDINARY ORIGINAL CIVIL JURISDICTION

ORIGINAL SIDE

In the matter of:

Indu Kocher & Ors.

Versus

Rajeev Maheswari & Ors.

Before:

The Hon'ble Justice

I.P. Mukerji

Date: 11.01.2011

Appearance:

Mr. S. K. Kapoor Sr. Adv.,

Mr. D. Basak, Adv., Mr. D. Basu Adv., Mr. Nabik Syam Adv., For the petitioners. Mr. Soumen Sen Adv.,

Ms. Puja Das Chowdhury Adv.,

Mr. S.N. Pandey Adv., Mr. P. Sinha Adv., For the respondents

The Court: This is a Section 41 application under the Arbitration Act, 1940.

Proceedings are going on from at least 1995. In another earlier Section 41 application, this Court by its order dated 10th March, 1995 had appointed the Manager of Corporation Bank, Lenin Sarani Branch to take possession of the title deeds of premises no. 2

8, B.T. Road Kolkata. By the order dated 21st March, 1995 this interim order was continued.

By their letter dated 16th June, 2009 the advocate on record for the petitioner wanted inspection of the title deeds, under the Right to Information Act, 2005.

By their reply dated 13th July, 2009 the corporation bank stated that they were not bound to furnish information regarding the title deeds under Section 8(1)(j) of the Act. The petitioners moved the Central Information Commission, which, by its decision dated 31st August, 2010 directed the CPIO Corporation Bank to seek necessary permission of this Court within 15 days of the decision for giving inspection of the title deeds to the petitioners. The bank by its letter dated 21st September, 2010 stated that no permission could be obtained from this Court as Special Suit No.9 of 1995 had been disposed of. In that letter, it was curiously mentioned that the Dharamtolla Branch at 8, Lenin Sarani was holding "the certified copies of the title deeds". This stand of the bank apparently caused apprehension in the mind of the petitioners about the title deeds. This is the reason for moving this application. They want immediate production and inspection of the original title deeds along with other reliefs. Mr. Soumen Sen opposes this application. He shows me an order dated 5th September, 2007 passed in Special Suit No.9, 1995 referring the parties to arbitration.

3

He further shows me an order of the Appeal Court dated 27th September, 2009. While entertaining admission of an appeal from the said order along with the stay application, by its order dated 27th September, 2007, the Appeal Court had stayed the order dated 5th September, 2007. He submits that since that order has been stayed and there is impliedly stay of all proceedings under the Act the Court cannot entertain any further Section 41 application. Prima facie, I do not accept this submission. When the Court has appointed the bank as a Receiver, the Court is entitled to know the exact location and status of the title deeds. Even if there is no arbitration the Court is empowered to seek production of the title deeds which it has entrusted with a Receiver. In the circumstances, the following interim order is passed at the moment.

a) Let copy of this application be served on the head/registered office of the Corporation Bank, its head zonal office in kolkata and its Lenin Sarani Branch, Kolkata. b) The head of the bank, the head of the zonal office in Kolkata as well as the manager of the branch at 8 Lenin Sarani (Dharmatala Street, Kolkata) are to produce/ensure production of the original title deeds of 8 B.T. Road, Kolkata before the Registrar, Original Side, Kolkata within a week of communication of this order, along with any certified copy of 4

those title deeds or any other copy in their custody and file a compliance report.

c) The Registrar, Original Side will inventorise the same and keep it in his safe custody.

d) Any party will be at liberty to inspect such title deeds, in the office of the Registrar (O.S.) but will not take copies for the time being. e) At the moment I am not passing any order for appointment of a Receiver to make inventory or to take possession of 8 B.T. Road Kolkata, as prayed for by Mr. Kapoor. Such prayers may be considered on the next occasion.

List this application on 25th January, 2011 in the same position. The question of maintainability of this application is kept open. All parties concerned are to act on a signed photocopy of this order on the usual undertakings.

(I.P. Mukerji, J.)

SP/