

Misc. (J) No. 81/2022

Smti Tarali Baruah Vs Dr. Sanjib Borthakur

07-11-2022

C/R put up along with C/R of Misc. (Caveat) No. 30/2022 and Misc. Appeal No.9/2022.

Seen and perused the petition No. 2630/2022 and the C/R of Misc.(Caveat) Case No. 30/2022.

Heard Id. Counsel for the caveator.

Ld. Counsel for the caveator by filing petition No. 2630/2022 has submitted that the appellant has abused the court process by evoking O.XXXIX r. 1 & 2 and section 151 of CPC instead of O. XLIII r. 1(r) of CPC. However, on perusal of the petition in this Misc.(J) Case, it appears that this Misc.(J) case is a prayer of injunction for protecting the right of the petitioner. Praying for setting aside the order of Id. Trial court in Misc. (J) case No. 199/2022 Misc. Appeal bearing No. 09/2022 is filed by the appellant side u/O XLIII r. 1 (r) of CPC.

Ld. Counsel for the Caveator has submitted that the court has passed untenable and illegal order on 02-11-2022 behind the back of the caveator without giving the caveator, the opportunity of being heard. Therefore, the petitioner prayed to revert back to the original position by vacating the order dated 02-11-2022 to prevent the abuse of process of law through mistake committed by the court.

On perusal of the C/R of this Misc.(J) No. 81/2022, it appears that vide order dated 02-11-2022, the O.P./caveator was restrained from dispossessing the petitioner from the suit premises, from demolishing the

tenanted premises and also restrained the O.P. from disconnecting the water and electricity connection on the tenanted premises as an interim relief. However, the said order was passed without hearing the caveator, as due to inadvertance the caveat was not placed before the Court.

The word (caveat) has not defined by the CPC. **Whartons Law Lexicon** describes the office of caveat as:

“In Scotland anyone who expects certain proceedings to be taken by another, may lodge with the Clerk of the Court a “Caveat”. He is then entitled to be informed by the Clerk if and when the proceedings are taken.”

Jowitts Dictionary of English Law gives the meaning of the word caveat as an entry made in the books of the offices of a registry of Court to prevent a certain step being taken without previous notice to the person entering the caveat, who is called the caveator.

Hon’ble High Court of A.P., in the case of ***Reserve Bank of Indian Employees Association and another vs. Reserve Bank of Indian and others: 1981 Legal Eagle (AP) 55*** has held that the meanings of the word caveat has not proved the caveat so high as to act as a fetter on the exercise of power by the Court. Hon’ble High Court held that:

“the order passed by a Court without giving a notice to the caveator cannot be treated as a nullity.”

Although the aforementioned decision of the Hon’ble High Court is not a binding precedent, this can be taken as a good **persuasive precedent for understanding of the law of caveat**. The Hon’ble Court has further held that,

“mere lodgment of a caveat would not deprive the Court of its power to pass an order even if the caveator was not informed of the date of hearing of the

matter. As the lodgement of a caveat is merely a right to be informed of the hearing date and it has no effect by way of curtailing the powers of a Civil Court to pass an appropriate order on the merits of the case.”

Considering the meanings of the word caveat as explained by the aforesaid two legal dictionaries as well as from the decision of the Hon’ble A.P. High Court, it appear to me that the order passed in this case without hearing the caveator is not without jurisdiction and is operative till it is set aside in appropriate proceeding.

Apart from that the order dated 02-11-2022 is only an intermediate order. The caveator has now received the information regarding the filing of the Misc.(J) case as well as the Misc. Appeal. As such, Ld. Counsel for the petitioner is allowed today also to advance his submission on the matter. But, Ld. Counsel for the caveator has prayed to vacate the order dated 02-11-2022 at first.

Vide order dated 02-11-2022 the O.P./Caveator was restrained from demolishing the tenanted premises and from evicting the petitioner from the tenanted premises as an intermediate relief to the petitioner only. This would not cause too much hardship to the caveator, but demolishing the tenanted premises and evicting the petitioner from the tenanted premises may cause serious hardship and irreparable loss to the petitioner, if the petitioner has any legal right over there. However, the real picture will come only after proper hearing of the both sides. Hence, I am of the opinion that the situation does not demand any interference of the interim order dtd. 02-11-2022 and the caveator has still ample opportunity of being heard.

As the caveator has already received the notice and appeared in the Court, inform the petitioner through Id. conducting counsel and fix the matter for hearing.

Fix 11-11-2022 for reply of show cause/ hearing.