

D/L
Item No. 9
23.12.2020
(Video Conference)
Kole

**FMAT 490 of 2020
with
IA No. CAN 1 of 2020
With
IA No. CAN 2 of 2020**

**Md. Toufique & Ors.
-Vs-
Sk. Kamaluddin & Ors.**

*Mr. Ashim Kr. Routh,
Mr. H. Singh,
Mr. I. Bhattacharjee,*

...for the appellants.

The appeal is arising out of an order dated 20th April, 2018. There is a delay of 860 days in preferring the appeal.

It appears from the impugned order the Learned Trial Judge directed the parties, namely, the plaintiffs and the defendant nos. 1 to 6, to maintain status quo over the suit property with regard to the nature, character and possession initially till 15th May, 2018 and it is submitted that the said interim order is still subsisting. It is further submitted that the injunction application is still pending. Mr. Routh, Learned Advocate appearing for the appellants submits that due to Aamphan the boundary wall has been damaged and the appellants may be permitted to construct the boundary wall.

We are at a loss to understand how an appeal could be carried out to this Court from the order dated 20th April,

2018 as the said order has no relevance in deciding the issue raised by Mr. Routh. In this appeal there is nothing on record to show that any application was filed before the Trial Judge seeking self-same direction. Moreover, if the Trial Judge is unable to take the said application, the remedy is not by way of an appeal. If there is a change in circumstance, the appellants shall approach the Trial Court and the appeal is not maintainable.

On such consideration, we are not satisfied with the explanation offered in preferring this appeal against the order dated 20th April, 2018 and as it seems that the grievance of the appellant is not arising out of the order dated 20th April, 2019 but due to such subsequent developments, we are not inclined to admit the appeal.

The appeal and the connected applications are accordingly dismissed.

This order shall not prevent the appellants to approach the Trial Court for any relief.

(Soumen Sen, J.)

(Saugata Bhattacharyya, J.)