

**Mir Abdul Wohid & Ors.
Vs.
Mir Abdul Wahed**

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The appellants are not represented either physically or on virtual mode, nor any accommodation is prayed for.

This appeal was filed on 24th January, 2018 but no attempt has been made to move this appeal.

The order impugned is arising out of an application filed under Order 39 Rule 2A of the Code of Civil Procedure. The plaintiffs/appellants appear to have alleged before the learned Single Judge that the opposite party/defendant No.1/respondent in spite of an order of injunction has continued the works of construction by erecting concrete structure of pillar with the knowledge of the order of injunction passed by the learned Court on 30th May, 2002 and 14th August, 2002. The learned Trial Court in deciding the said application has taken note of the evidence of the Inspection Commissioner and the evidence adduced on behalf of the plaintiffs/appellants with regard to the violation, the learned Trial Court has considered that the plaintiffs/appellants have filed a suit for partition against the defendant Nos.1 and 2 and from Exhibit 2 it appears that there is an existence of four storied building in the suit premises at the time of inspection on 28th January, 2004 but did not find any one or two storied building in the said plot. The learned Judge has taken into consideration that although the plaintiff and the defendant are the co-sharers in respect of the suit premises and originally the suit premises belong to one Mir Imaduddin, the grandfather of the parties to the suit. The allegation is with regard to the construction of

G+4 storied building in the suit premises. It was not clear from the evidence adduced that the existing construction on the suit premises was carried out after the orders dated 30th May, 2002 and 14th August, 2002. In absence of any material to show that such constructions are carried out after the interim order was passed, it was not possible for the Trial Court to hold the defendant guilty of contempt. The plaintiffs/appellants could not clarify as to the status of the suit premises on the dates when the order of injunction was passed as the order of injunction was in the nature of status quo. The plaintiffs/appellants could not substantiate that any construction was done by the defendant in violation of the interim order.

In absence of any such evidence, we find that the Trial Court was justified in not holding the defendant No.1/respondent guilty of contempt.

On such consideration, the appeal fails.

However, there shall be no order as to costs.

Urgent Photostat certified copy of this order, if applied for, be given to the parties on usual undertaking.

(Saugata Bhattacharyya,J.)

(Soumen Sen, J.)

