

22-01-2021

FMAT 126 of 2020

Ct. 12

Nirmal Santra
Versus
Raghunath Jana

(Through Video Conference)

Mr. Kishore Mukherjee, Adv.

...for the appellant.

This appeal has been preferred against an order, being Order No. 89 dated 21st December, 2019 in an application filed under Order 39 Rule 2A of the Code of Civil Procedure.

We have perused the order under appeal. It is presumed that in deciding the application under Order 39 Rule 2A of the Code of Civil Procedure, the learned Judge was of the view that the report of the Special Officer does not conclusively show that there has been any willful disobedience and/or violation of the order of injunction passed by the learned trial court as there is no description of the condition of the building existed at the time of injunction and there is no materials produced by the appellant to show the extent of repairing work allowed to the opposite party by the Hon'ble High Court, Division Bench and there is also nothing conclusive that new construction has been done by the opposite party over the schedule "B" suit property in violation of the injunction order.

These three factors that were taken in consideration by the trial court are extremely relevant in deciding the application under Order 39 Rule 2A of the Code of Civil Procedure as it is elementary that in

order to hold a person in contempt, such violation has to be willful and deliberate. Moreover, as of date, the suit filed by the plaintiff was dismissed on merits and the appeal is pending.

On such consideration, we do not find any reason to interfere with the order passed by the learned trial judge. The appeal, accordingly, stands dismissed.

However, there shall be no order as to costs.

(Aniruddha Roy, J.)

(Soumen Sen, J.)