

**FMAT 284 of 2020
with
IA CAN 1 of 2020 (Old No. 2616 of 2020)**

Suman Sarkar

- Versus -

Manisha Dutta Sarkar

(Through Video Conference)

**Mr. Sudipta Kumar Bose
Ms. Lipika Nath
Mr. Santu Mondal**

.....For the appellant

**Mr. Anindya Bose
Mr. Diptendu Mandal**

.....For the respondent

By consent of the parties the appeal and the application are taken up together and disposed of by this common order.

The appeal arises out of an order passed by the learned Civil Judge, Senior Division, 2nd Court, Asansol in Title Suit No. 10 of 2020 instituted by the plaintiff/appellant against her wife Smt. Manisha Dutta Sarkar.

The dispute relates to a dwelling house in which the defendant is presently residing. The plaintiff alleged that the suit property together with the construction upon the said property was at the expense of the plaintiff. The plaintiff disclosed the sanctioned letter from the UCO Bank to show that the EMI for the loan obtained for the purpose of raising construction has been raised by the plaintiff.

Learned trial Judge while considering the matter on merit seems to have been overlooked the sanctioned letter

as well as the fact that the EMIs have been paid by the plaintiff. Although it is claimed by the defendant that the loan was sanctioned in the joint names of the parties but having regard to the fact that the defendant is a housewife and has no independent source of income. The plaintiff has been able to raise at least a *prima facie* case with regard to the purchase and financing the construction. The true fact whereof can only be revealed at the time of the trial. Once the plaintiff is able to establish *prima facie* that he had been continued to the purchase and raising of construction over the suit land, even it is assumed that the loan was sanctioned in the joint names of the parties. His interest over the suit property cannot be totally ignored and/or disregard. The right of the plaintiff in the circumstances requires to be preserved.

On such consideration, we set aside the order of the appeal. The plaintiff is restrained from alienating and/or encumbering and/or disposing of the suit property without an expressed opinion of the trial court.

We make it clear that this order shall not affect any right of UCO Bank in relation to the said property for recovery of the loan amount.

Appeal and the application are disposed of.

There shall, however, be no order as to costs.

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

(Subhasis Dasgupta, J.)

(Soumen Sen, J.)