

07.04.2021
SL No.10
Court No.17
(gc)

**FMAT 240 of 2021
With
CAN 1 of 2021**

**Rajani Poddar
Vs.
Nishant Khetawat & Ors.**

(Via Video Conference)

Mr. Chayan Gupta,
Mr. Rittick Chowdhury,
...for the Appellant.
Mr. Reetobrata Kr. Mitra,
Mr. Sabyasachi Sen,
...for the Respondents.

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

The appellant is aggrieved by the conduct of the alleged respondents in taking a resolution of 12th January, 2020, whereby restrictions have been imposed upon the members of the Saraswati Niket Owners Society (in short 'Society') not to use their flats for non-residential purpose. It was further recorded that if any member violates the said rules and regulations, the Managing Committee would have the power to take such steps against the said defaulting member as the Managing Committee might decide and determine in the meeting of its Executive Committee.

There cannot be any doubt that insofar as the resolution is concerned, it clearly interdicts the rights of the appellant in using her flats for commercial purpose as the

learned Trial Judge in disposing of the injunction application has passed the following order:-

“the security guard of the entrance gate to be deployed for bringing the visitors/customers of the defendant from the main entrance gate upto the lift installed in the building wherein the E1 and F1 flats are situated.”

Mr. Reetobrata Kr. Mitra, learned Counsel appearing on behalf of the respondents has submitted that the security guard at the entrance gate has been deployed for bringing the visitors/customers of the defendant from the main entrance gate upto the lift installed in the building wherein the E1 and F1 flats are situated and accordingly submitted that there has been no violation of the order.

Be that as it may, the statement may not suffice as the document on record clearly shows that if the said resolution is implemented against the appellant, it would result in interfering with the order passed by the Trial Court.

On such consideration, we restrain the respondents from giving effect to the aforesaid resolution insofar as the appellant is concerned till the disposal of the applications filed by the appellant before the Trial Court under Order 39 Rule 2A and Section 151 of the Code of Civil Procedure. The Trial Court is requested to take up hearing of the application filed under Order 39 Rule 2A of the Code of Civil Procedure on 17th April, 2021, the date, fixed by the Trial Court and dispose of the said application as expeditiously as possible

without granting any unnecessary adjournment to either of the parties.

With the aforesaid direction, the appeal being FMAT 240 of 2021 and the stay application being CAN 1 of 2021 stand disposed of.

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

(Kausik Chanda, J.)

(Soumen Sen, J.)