

15.07.2021
KC(15)

F.M.A.T. 409 of 2021
Devesh Bansal
-versus-
Birendra Kumar Roy and Ors.
With
CAN 1 of 2021

(Via Video Conference)

Mr. Abhrajit Mitra,
Mr. Satadeep Bhattacharya,
Ms. Sonia Sharma,
Mr. Souradip Banerjee.....For the appellant.

Mr. Abhijit Roy,
Mr. Subham Gupta,
Ms. Papiya Roy.....For the respondent
no. 1.

Mr. Swapan Kumar Debnath,
Mr. Subhrangshu Panda.....For the respondent
nos. 2, 3 and 4.

By consent of learned counsel for the parties, we
propose to dispose of this appeal today dispensing with
all formalities.

The material part of the impugned order dated 2nd
July, 2021 passed by the 6th Bench of learned City Civil
Court, Calcutta in T.S. No. 1470 of 2017 is as follows:

“Construction is going on at the site.
Considering such aspects of the matter till filing
of the W.O there shall be status quo order with
regard to the construction.

The K.M.C. authority who are the
Defendants in this case are directed to keep vigil
over the construction till the disposal of the
application under Section 151 of C.P.C. filed
today.”

Mr. Abhrajit Mitra, learned senior advocate for the appellant/defendant no. 2 submits that subsequent to filing of the memorandum of appeal and the connected stay application the plaintiff has filed an application under Order XXXIX rule 2A of the Code of Civil Procedure alleging violation of the said order by his client.

He says that there is no such violation.

We are of the view that how the court below would deal with an application under XXXIX rule 2A of the Code of Civil Procedure is not within our domain. It involves interpretation of his order by the learned judge and assessment whether there has been violation of that order.

We dispose of this appeal by observing that in the event the learned court below is to consider the application under Order XXXIX rule 2A of the Code of Civil Procedure made by the plaintiff, it would be open to the appellant/defendant no. 2 to urge all the grounds mentioned in this appeal, in that application. It would also be open to the learned judge to interpret his order dated 2nd July, 2021 and thereafter assess the merits of the application. Our observation would also apply if the point regarding interpretation of the said order dated 2nd July, 2021 and alleged violation of that order is raised otherwise in the suit.

The appeal (F.M.A.T. 409 of 2021) and the connected application (CAN 1 of 2021) are disposed of.

(I.P. MUKERJI, J.)

(ARINDAM MUKHERJEE, J.)