

04.08.2021
KC(3)

F.M.A.T. 425 of 2021
Sunita Seal and Anr.
-versus-
Mrinal Lal Seal

(Via Video Conference)

Mr. Satarup Banerjee,
Ms. Sonali Mukhopadhyay.....For the appellants.

Mr. Aniruddha Mitra,
Mr. Gaurav Purakayastha.....For the respondent.

As the point involved is very short we are disposing of this appeal by this order, after dispensing with all formalities.

The interim application at the motion stage has to be decided by the learned court below first and thereafter the application is to be disposed of as expeditiously as possible, after exchange of affidavits.

We do not think that the learned judge has taken into account the circumstances of this case while considering grant or refusal of an interim order.

The appellant no. 1 is the mother of the appellant no. 2. The respondent is the other son of the appellant no. 1. The appellants reside on one floor of the subject premises. The respondent resides on another.

The appellant no. 1 is a cancer patient. The appellants say that the respondent has made a rooftop garden. This has caused extensive seepage of water into

the floor occupied by the appellants. This allegation is denied by the respondent.

The fact remains that there is leakage of water from the roof and walls of the portion occupied by the appellants and that this is causing great inconvenience, specially to the mother, suffering from cancer.

In that view of the matter as an interim measure we direct the Registrar, Original Side of this court to nominate a chartered engineer/surveyor, from the panel of such experts maintained with him. We appoint Mr. Robi Prosad Mookerjee, learned advocate of the Bar Library Club as a Special Officer at an initial remuneration of Rs. 25,000/-. Such remuneration shall be paid by the appellants.

The chartered engineer/surveyor will very expeditiously assess the cause of the water leakage and indicate the same to the special officer. He will also submit the estimate of cost of repair work to the Special Officer. The special officer shall initially take a temporary measure through the chartered engineer/surveyor to stop the leakage. The fees and costs of the chartered engineer/surveyor for this temporary work shall be shared by the parties equally. This exercise should be completed within a fortnight from date.

Steps will be taken by the parties with the learned court below so that the interim application at the motion stage is taken up by that court within a

fortnight from date. Thereafter this interim order may be varied by the learned court below depending on the facts and circumstances of this case.

The above civil work may also continue so as to be permanent under the supervision of the court below if it is so thought, by the said court.

The appeal (F.M.A.T. 425 of 2021) and the connected application (CAN 1 of 2021) are disposed of.

(I.P. MUKERJI, J.)

(ANIRUDDHA ROY, J.)