

25.01.2021
SL No.21
Court No.12
(gc)

**FMAT 1018 of 2019
With
CAN 1 of 2019
(Old No: CAN 10757 of 2019)**

**Prem Lal Sharma
Vs.
Chandan Bhagat**

(Via Video Conference)

Mr. Dhiraj Tribedi,
...for the Appellant.

The affidavit of service filed in Court today be kept with the record.

This appeal is arising out of an order passed by the learned Judge, XIIth Bench, City Civil Court at Calcutta on 4th September, 2019 in an application filed by the plaintiff under Order 39 Rule 1 & 2 of the Code of Civil Procedure on 30th August, 2019 praying, *inter alia*, for an order of injunction restraining the defendant from dispossessing the plaintiff forcibly and illegally from the suit-shop room without due process of law. The plaintiff alleged to be a sub-tenant under the defendant paying monthly rent at the rate of Rs.135/- per day in cash for his use and occupation and to run a business from the said premises. In support of his contention that the plaintiff is carrying on business from the suit premises, the plaintiff has disclosed certificate for enlistment issued by KMC showing his place of business specifically at the ground floor of 131, Chittaranjan Avenue. That the plaintiff had some interest in the suit premises would be evident from the written objection filed by the defendant in Paragraph 6 where, according to the defendant, the plaintiff looked after the suit-

shop and run the same and the defendant assured to pay the plaintiff a sum of Rs.135/- per day from the profit to bear his daily expenses.

We find that the order is quite innocuous as in such a situation the Court is required to preserve the interest of the parties to the property in question till the suit is finally decided. The learned Trial Court has proceeded on the basis of the enlistment certificate issued by the KMC and also on the basis of the pleadings filed by the plaintiff as well as the defendant in the suit. It has been strenuously argued before us that the plaintiff is not in possession of the suit property. This, however, is contradicted by Paragraph 6 of the written objection filed before the learned Trial Court. That the plaintiff may have some dominion over the suit property is *prima facie* established. The status of the plaintiff vis-à-vis the suit property is to be decided at the final hearing of the suit.

The appeal being FMAT 1018 of 2019 along with the stay application being CAN 1 of 2019 (Old No: CAN 10757 of 2019), accordingly, stand dismissed.

The observations made by the learned Trial Court and also by us are *prima facie* and not conclusive and shall not influence the learned Trial Judge in deciding the suit.

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

(Aniruddha Roy, J.)

(Soumen Sen, J.)