

28.01.2022
Item No.22.
Court No.6.
AB

(Via Video Conference)

**M.A.T. 62 of 2022
With
I A CAN 1 of 2022**

Sri Anujit Kumar Datta

Vs

Shyamal Sarkar & Others

Mr. Jayak Kr. Gupta,
Mr. Pranab Halder ...for the Appellant.

Mr. Debjit Mukherjee,
Ms. Susmita Mukherjee....for the K.M.C.

Mr. Ivan Royfor the Respdt. No.1.

By consent of the parties, the appeal and the application are taken up together for hearing.

The respondent no.1/writ petitioner filed the writ petition alleging inaction on the part of the Kolkata Municipal Corporation in not allowing him to carry out the repair works in respect of a building at premises no.4/47E, Chanditala Lane, Kolkata-700040.

It appears that a notice under Section 411(1) of the Kolkata Municipal Corporation Act,1980 was issued against the respondent no.1/writ petitioner on November 19, 2016, asking him to carry out a demolition work/repair a part of the building without changing the nature and character of the same.

The learned Single Judge disposed of the writ petition with a direction upon the writ petitioner to continue with the repair work following the instructions given by the Kolkata Municipal Corporation. It was observed by the learned Single Judge that whether or not there has been any encroachment by the appellant, will be decided in the pending title suit between the appellant/respondent no.9 and the writ petitioner/respondent no.1.

The learned Judge further directed that the repairing work shall be done under the supervision of an empanelled structural engineer and he shall not allow any unauthorised construction.

It was also clarified by the learned Single Judge that the repairing work shall be without prejudice to the rights and contentions of the parties in the suit and no party shall claim any equity with regard to such repairing work.

In our view, the order impugned has sufficiently taken care of the interest of the appellant/respondent no.9, who alleges before us that in the name of repairing work, the respondent no.1/writ petitioner will encroach upon the portion of the building in occupation of the appellant at premises no. 4/47F, Chanditala Lane, Kolkata-700040.

Such apprehension is misplaced. The learned Single Judge has clarified that the respondent

no.1/writ petitioner is allowed only to carry out repair works without infringing the interest of the respondent no.9/appellant.

However, for abundant caution, we also clarify that the writ petitioner/respondent no.1 shall carry out the repair work in terms of the notice dated November 19, 2016, as appearing at page 88 of the stay application, at his premises no.4/47E, Chanditala Lane, Kolkata-700040. If there is any encroachment by the writ petitioner/respondent no.1 in the garb of repairing work or the writ petitioner/respondent no.1 takes any steps beyond the scope of the notice, the engineer, entrusted to supervise the repair work, shall be entitled to take steps against him in accordance with law.

Since we have not called for affidavits, the allegations in the stay petition are deemed not to be admitted by the respondents.

The appeal being MAT 62 of 2022 along with IA CAN 1 of 2022 are, accordingly, disposed of.

Urgent photostat certified copy of this order, if applied for, be supplied expeditiously after compliance with all the necessary formalities.

(Kausik Chanda, J.)

(Arijit Banerjee, J.)

