

Item 43. 05-07-2022

FMA 1756 of 2015
CAN 1 of 2015 (old CAN 5343 of 2015)

^{sg} Ct. 8

Ashim Roy
Versus
Sova Bose & Anr.

(Through Video Conference)

This matter appeared in the warning list on 29th June, 2022 and continued to appear in the list until it was transferred to the daily cause list today.

The appeal is arising out of an order dated 26th June, 2014 passed by the learned Judge, 2nd Bench at City Civil Court at Calcutta in an application for injunction filed by the plaintiff as well as the application filed by the defendants for vacating the interim order.

The plaintiff filed a suit for declaration and injunction. The specific case of the plaintiff is that she is the absolute owner of the suit building and the defendant no.1 being the tenant in respect of ground floor of the suit property. The respondents are causing inconvenience to the plaintiff from making further construction on the existing structure belonging to the plaintiff. The defendant no.1 was pressing the plaintiff for giving him an accommodation in the upper floors of the building which are of the very high value in order to cause impediment to beneficial enjoyment of the suit property. All kinds of inconveniences are caused by the plaintiff. The defendant filed a suit subsequent to the suit filed by the plaintiff being Title Suit No. 321 of 2014 praying, inter alia, for restraining the plaintiff, being the respondent in this proceeding,

from disturbing possession of the plaintiff till the disposal of the suit. The learned Trial Judge considered the earlier orders passed in both the suits and modified the interim order to the extent that the plaintiff is permitted to undertake construction work in the suit building without disturbing the peaceful enjoyment and possession of the defendant no.1 in any manner whatsoever. This order is under challenged.

The defendant cannot cause any impediment to the plaintiff with regard to construction which may be by way of partition and for beneficial and peaceful enjoyment of the suit property unless such construction cause any inconvenience or tenanted portion is touched in any manner whatsoever. The interest of the defendant no.1/appellant has been adequately protected.

Under such circumstances, we do not find any reason to interfere with the order passed by the learned Trial Judge.

The appeal and the connected application stand dismissed. However, there shall be no order as to costs.

(Siddhartha Roy Chowdhury, J.)

(Soumen Sen, J.)