

9 11.4.2022
Sc Ct. no.8

FMA 351 OF 2022
with
I.A. No. CAN 1 OF 2022

Musammat Fatema Bibi & Ors.

Vs.

Sekh Safiuddin

Mr. Partha Pratim Roy
Mr. Sayantan Hazra.

...For the Appellants/
Plaintiffs

The appeal is directed against an order passed by the learned Civil Judge (Senior Division), Ghatal, Paschim Medinipur in J. Miscellaneous Case No. 01 of 2016 in connection with an application under Order 39 Rule 2A of the Code of Civil Procedure.

The applicant filed the application on the basis that the respondent opposite party in spite of knowledge of the order of injunction on 22nd November, 2015, had raised construction. The record reveals that there was no order in existence on 22nd November, 2015. Accordingly, the learned trial Judge was correct in holding that there is no existence of any injunction order passed on 22nd November, 2015.

Moreover, the report of the advocate commissioner on the actual date of inspection suffers from serious infirmity. There are contradiction in respect of the date when the advocate commissioner in fact had visited the

site. The advocate commissioner had filed a report on 7th December, 2015. The advocate commissioner said that she had served the notice of local inspection on 23rd December, 2015 and in such she stated that she would hold the local inspection on 25th November, 2015. The learned advocate for the opposite party endorsed the said notice on 7th December, 2015.

The entire foundation of the application for Order 39 Rule 2A read with other available materials could not establish that there has been a violation of the order dated 22nd November, 2015.

The learned trial Judge by a reasoned order dismissed the petition under Order 39 Rule 2A of the Code of Civil Procedure.

The trial Judge was correct in holding that unless there has been a clear violation of the order with full knowledge of the content of the order, no proceeding can be drawn up against the opposite party. In such circumstances, we do not find any reason to interfere with the order of the learned trial Judge.

We make it clear that this order is restricted only with regard to the applicability of Order 39 Rule 2A of the Code of Civil Procedure.

The appeal stands dismissed. Accordingly, the connected application being I.A. No. CAN 1 of 2022 also stands dismissed.

There shall be no order as to costs.

Urgent Photostat certified copy of this order, if applied for, be furnished expeditiously.

(Ajoy Kumar Mukherjee, J.)

(Soumen Sen, J.)