

Item-4 &5	11-02-2022	FA 55 of 2018 CAN 1 of 2021 CAN 3 of 2021
sg	Ct. 8	Shanti Devi Kothari Versus Sunil Kumar Sen
		With
		FA 56 of 2018 CAN 1 of 2021 CAN 2 of 2021 CAN 3 of 2021 CAN 4 of 2021
		Mohanlal Kothari Versus Sunil Kumar Sen

(Through Video Conference)

Ms. Micky Chowdhury, Adv.
Mr. K. Raihan Ahmed, Adv.
...for the appellant

Mr. Sauradipta Banerjee, Adv.
Ms. Aparajita Rao, Adv.
Ms. Fatima Hassan, Adv.
..for the respondent

Mr. Swapan Kr. Debnath, Adv.
...for K.M.C.

By consent of the parties, both the appeals and the connected applications are treated as on day's list and disposed of by this common order.

The appellants are tenants under the plaintiff/decree-holder. The appellants were unwilling to surrender their tenancy in order to enable the plaintiff to make construction. The suit was filed for building and rebuilding, which obviously would entail dispossession of the two tenants from the suit premises. The decree-holder neither had contended nor is contending today that

they were not given the due share of the areas presently under the occupation of the two tenants.

In order to allay fear in the mind of the tenants that their possession would not be restored after the exercise of building and rebuilding carried out by the decree-holder, we appointed a Special Officer to inspect the premises and to ascertain whether the portion shown in the sanctioned plan earmarked for the tenants exists in the present shop.

The Special Officer has filed her report. The report shows that the sanctioned plan duly earmarked the areas to be provided to the tenants after building and re-building. The tenants dispute the same by referring that 2 square feet area is less than to which they are presently entitled under the two agreements. The sanctioned plan clearly shows that by merging the two tenants, the area to be occupied by the tenants would come to about 841 square feet. The appellants contend that it should be 843 square feet according to the Building Rules and the sanctioned plan.

Even if we accept the submission made on behalf of the appellants with regard to their occupied area, it is negligible. Moreover, the appellants would be provided an area of 841 square feet in a commercial hub. These are not the objections which require any consideration.

Mr. Banerjee, learned Counsel appearing on behalf of the decree-holder has assured that as soon as the building is constructed and completion certificate is issued, the appellants shall be provided 841 square feet in terms of the sanctioned plan.

On such consideration, we do not find any reason to interfere with the order passed by the learned Trial Court. The

decree is affirmed with the observation made by us in this order.

The Special Officer shall be paid a further remuneration of 1000 GMs by the respondent/decree-holder.

It is also not in dispute that the tenants/appellants have been provided a temporary accommodation in the open car parking space and they have been assured of such accommodation till the building is constructed. Appropriate undertaking shall be filed before the KMC for demolition of the said structure after the building is completed. The possession should be handed over by the appellants to the landlord within 48 hours.

Affidavits filed in Court are taken on record.

The report of the Special Officer is also taken on record.

The Special Officer is discharged.

Both the appeals and the connected applications are, accordingly, disposed of.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties upon compliance of all requisite formalities.

(Ajoy Kumar Mukherjee, J.)

(Soumen Sen, J.)