

Dl. May 2,
15. 2022

F.M.A. 566 of 2022

Abdul Kalim
Vs,
Mirza Md. Sikandar Ali Begg & ors.

The appellant is not represented, nor any accommodation is prayed for on his behalf, when the matter is called on.

The appellant is the defendant no. 6 in a suit for specific performance of contract filed by the plaintiffs/respondents against the defendants. During the pendency of the suit, with the consent of the defendants, an Advocate Commissioner was appointed to hold inspection on the following points :-

1. Whether access to lift on third and fourth floor as to the clause 8 of the agreement has been blocked or not?
2. Whether the front portion of the common passage is intact as to the clause 4 of the agreement or not?

The report of the Advocate Commissioner shows that clauses 4 and 8 of the agreement have been violated. Clause 4 of the agreement relates to a common passage in between the buildings and clause 8 relates to the access to the lift on second, third, fourth and fifth floors.

The defendant no. 6/appellant did not appear at the initial stage, when the injunction application was heard on merits. However, in the late afternoon, he appeared and wanted to reopen the issue, which was disallowed by the learned trial judge.

In view of the report of the Advocate Commissioner

that there has been apparent breach in not carrying out clauses 4 and 8 of the agreement and also having regard to the fact that the defendants no. 1 to 5 have admitted such breach, we do not find any reason to interfere with the order passed by the learned trial judge in the form of status quo.

The appeal is, therefore, summarily dismissed under Order XLI Rule 11 of the Code of Civil Procedure.

However, we request the learned Civil Judge (Senior Division), Sixth Court at Alipore, South 24-Parganas, to dispose of the suit as expeditiously as possible without granting any unnecessary adjournment to either of the parties unless it is unavoidable.

In view of dismissal of the appeal nothing remains in the connected application for stay filed under CAN 1 of 2022 and the same is also dismissed.

There will be no order as to costs.

dns

(Sugato Majumdar, J.)

(Soumen Sen, J.)