

07.04.2022

Item No.81

Court No.32

Avijit Mitra

FMA 476 of 2003

with

IA No. CAN 1 of 2003 (Old No.CAN 4286 of 2003)

with

IA No. CAN 3 of 2014 (Old No.CAN 8980 of 2014)

Arun Kumar Hazra

- Versus -

Pradyot Kumar Hazra & anr.

Mr. Ganesh Prasad Shaw

...for the Appellant

The present appeal has been preferred challenging an order no.4 dated 3rd May, 2003 passed by the learned Judge, 10th Bench, City Civil Court at Calcutta in Title Suit No.556 of 2003.

Records reveal that the appeal was admitted and in the stay application, being CAN No.4286 of 2003 an interim order was passed on 23rd June, 2003. The operative part of the said order runs as follows :

‘Till 7th July, 2003, there shall be stay of operation of the impugned order with liberty to the parties to apply for extension and/or variation and/or vacation of this interim order upon notice to the other side.

We, however, also injunct the appellant from surrendering the tenancy in question till 7th July, 2003 with liberty to the parties to apply for

extension and/or variation and/or vacation of this interim order upon notice to the other side.'

As the said interim order lapsed, the appellant filed a further application for interim order being C.A.N. 6936 of 2003. The said application was disposed of by an order dated 13th February, 2004 extending the interim order granted earlier till disposal of the application for stay.

The respondent thereafter filed an application being CAN 8980 of 2014 with a prayer to vacate the *interim* order dated 13th February, 2004.

Mr. Shaw, learned advocate appearing for the appellant/defendant submits that the appellant is the sole tenant of the shop in question situated at 66/4, Mahatma Gandhi Road, Kolkata-700009 and he is in possession of the same and is continuing to pay the rent till date.

He argues that the learned Court below erred in law in granting an *ex parte ad interim* order of injunction without appreciating the facts and circumstances of the case. The impugned order is not supported with appropriate reasons and as such the same is not sustainable in law. The learned Court below failed to appreciate that a trade license does not create any tenancy right and that the respondent/plaintiff had no such right over the shop in question. The appellant is the sole

tenant and as such by the impugned order he could not have been restrained from disturbing, interfering in carrying on business and from surrendering the tenancy right.

No one appears on behalf of the respondent and no accommodation has been sought for.

The suit is of the year 2003 and due to the interim order passed in appeal there had been no progress in the suit till date. By the order impugned in the appeal the appellant herein was restrained from disturbing, interfering in carrying on business and from surrendering the tenancy right. From the order passed in the stay application on 23rd June, 2003, it appears that though the order impugned in the appeal was stayed, the appellant was injuncted from surrendering the tenancy.

The learned Court below upon examining the pleadings and documents and upon arriving at a *prima facie* finding passed the order of *ad interim* injunction. Neither on principle nor on authority there was any bar upon the learned Court below towards grant of such *ad interim* protection. The order impugned does not suffer from any patent infirmity. The discretion exercised by the learned Court below also does not appear to be unreasonable.

For the reasons discussed above, the present appeal and the application for stay are dismissed.

In view of such dismissal, the application for vacating the interim order being CAN 8980 of 2014 has become infructuous and the same is also dismissed.

Urgent photostat certified copy of this order, if applied for, be given to the learned advocates for the parties.

(Sugato Majumdar, J.) (Tapabrata Chakraborty, J.)