

11.08.2022

Court No.32
rpan/09

FMAT 148 of 2022

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IA No.: CAN 1 of 2022

and

IA No.: CAN 2 of 2022

Rajasthan Fertilizers & Chemical Corporation Ltd.

- Versus -

M/s. Bengal Industrial Corporation & Another

Mr. Sabyasachi Choudhury,

Ms. Urmila Chakraborty,

Mr. Amit Meharia,

Ms. Paramita Banerjee,

Ms. Subika Paul

... for the Appellant.

Mr. Siddhartha Banerjee,

Mr. Soumya Ray,

Mr. Suman Banerjee,

Ms. Jyoti Rauth,

Ms. Amrita Chakraborty

... for the Respondent no.1.

In Re.: CAN No. 2 of 2022

The present appeal has been filed challenging the judgment and order dated 23rd November, 2021 passed by the learned Judge, VII-Bench, City Civil Court at Calcutta.

In connection with the present appeal an application for condonation of delay, being IA No.: CAN No. 2 of 2022, and an application for stay, being IA No.: CAN No. 1 of 2022, has been filed by the appellant.

Upon hearing Mr. Choudhury, learned advocate, representing the appellant and Mr. Banerjee, learned advocate, appearing for the respondent no.1, we are satisfied with the explanation given in the application for condonation of delay and accordingly, condone the delay

in filing the present appeal and allow the application for condonation of delay.

The application for condonation of delay, being I.A. No. CAN 2 of 2022, is, accordingly, disposed of.

As Mr. Banerjee, learned advocate, has entered appearance on behalf of the respondent no.1, service of notice of appeal upon the said respondent is dispensed with.

The appeal has been filed challenging an interlocutory order passed in connection with a suit for declaration of tenancy right and other consequential reliefs filed by the respondent no.1 against the appellant herein who is the defendant no.1 in such proceedings. Considering the nature of challenge in the present appeal, we proceed to hear out the appeal. By consent of the parties, the appeal is taken up for final hearing.

Mr. Choudhury, learned advocate appearing for the appellant/defendant no.1 submits that the respondent no.1 herein has instituted a suit, being Title Suit No.552 of 2020 before the learned 7th Bench, City Civil Court at Calcutta *inter alia* praying for a declaration that the plaintiff is a monthly tenant in respect of the eastern side first floor of premises no.19, R. N. Mukherjee Road, Police Station: Hare Street, Kolkata – 700 0001 having actual measurement of 1980.64 sq. ft., as described in the schedule of the plaint. In connection with the aforesaid suit, an application under order XXXIX Rules (1) and (2) of the Code of Civil Procedure was filed. On an appeal

preferred from a refusal to pass an ex parte ad-interim order, this Hon'ble Court by an order dated 26th August, 2020 passed in FMAT 358 of 2020 was *inter alia* pleased to observe that the plaintiff shall not be evicted from the suit property or their possession interfered with, save by the authority of law. The aforesaid appeal was disposed of with a direction to expedite hearing of the injunction application.

The injunction application has, however, been finally disposed of by order no. 24 dated 23rd November, 2021. The aforesaid order is impugned in the present appeal.

It appears that by the order impugned, the injunction application, filed by the plaintiff in Title Suit no.552 of 2020 (respondent no.1 herein), has been disposed of *inter alia* by recording that '*The defendants are restrained from interfering with the possession of the plaintiff in respect of the Suit premises till disposal of the suit.*'

Mr. Choudhury submits that the appellant has already filed a suit, being C. S. No. 26 of 2021 before this Hon'ble High Court at Calcutta *inter alia* praying for a decree for recovery of physical and vacant possession in respect of ALL THAT one office block measuring 2400 sq. ft. more or less on the 1st floor at the eastern building premises no.19, R. N. Mukherjee Road, lying and situated within the ambit of Hare Street police station, Kolkata –

700001. He submits that an application under Chapter XIII A of the Original Side Rules has been filed, the respondent no.1 herein is taking shelter of the aforesaid order, impugned in this appeal, to resist the suit and/or any decree for recovery of possession that may be passed.

The impugned order seriously affects and prejudices the eviction proceedings, the same may lead to unnecessary conflict of judicial opinion and the order does not provide for any reasons.

Mr. Banerjee, learned advocate appearing for the respondent no.1 submits that the respondent no.1 has already filed an opposition to the application under Chapter XIII A filed by Mr. Choudhury's client. He further submits that there is no illegality in the order passed by the learned court below which is impugned in the present appeal. He argues that this order cannot stand in the way of Mr. Choudhury's client obtaining any decree in its favour, if otherwise Mr. Choudhury's client is entitled to, in law.

Heard the learned advocates appearing for the respective parties and considered the pleadings on record including the impugned order. We find, that the appeal being FMAT 358 of 2020 was disposed of by the order dated 26th August, 2020. We find that by the aforesaid order this Hon'ble Court while admitting an appeal against the refusal to pass an ex parte ad-interim order observed *"that the appellant/plaintiff shall not be evicted from the suit property or their possession interfered with*

save by authority of Law.” The appeal was disposed of directing the learned court below to expedite hearing of the injunction application.

The learned VII-Bench, City Civil Court at Calcutta has since by the order impugned disposed of the injunction application. Even after noting and discussing the said order passed by the Hon’ble High Court in FMAT No. 358 of 202, in the order impugned the Learned Judge appears to have omitted the rider to the effect *“that the appellant/plaintiff shall not be evicted from the suit property or their possession interfered with save by authority of Law.”*

We are of the opinion that no blanket order of injunction can be passed restraining a party from being evicted. Accordingly, we modify the order passed learned VII-Bench, City Civil Court at Calcutta and direct that the order impugned shall be read to mean and include that the plaintiff/respondent no.1 herein shall not be evicted from the suit property or their possession interfered with save by authority of law.

Since affidavit has not been called for, the allegations made in the stay application shall be deemed to have been denied.

Since no other points have been raised by the parties, no further order needs to be passed in the present appeal.

The appeal, being FMAT 148 of 2022 and the stay application, being IA No.: CAN 1 of 2022 are disposed of.

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

(Raja Basu Chowdhury, J.) (Tapabrata Chakraborty, J.)