

25.11.2022
SL No.27
Court No.8
(gc)

FMAT 456 of 2014

**Sri Prasanta Saha & Anr.
Vs.
Sri Goutam Jana**

This matter appeared in the warning list on 16th November, 2022 with a clear indication that the appeal shall be transferred to the daily list on 21st November, 2022.

The appellants are not represented nor any accommodation is prayed for on behalf of the appellants, although, the appellants have sufficient knowledge and notice of the listing of this matter. This appeal was filed in or around April, 2014 but since then no attempt has been made to move this appeal. The defects have also not been removed.

The appeal is arising out of the judgment and order dated 7th March, 2014 in connection with two applications, one filed by the plaintiff for temporary injunction under Order 39 Rules 1 & 2 read with Section 94 and 151 of the Code of Civil Procedure and another filed by the defendants under Order 39 Rule 4 of the Code of Civil Procedure. An injunction application was filed on 20.11.11. The plaintiff in the suit claimed monthly tenancy. It is elementary that a person in possession cannot be dispossessed without following the due process

of law. The learned Trial Judge has applied the said principle and, accordingly, has directed the parties to maintain status quo in respect of the suit property as regards their respective possession. The plaintiff was able to establish his possession in the suit property on the basis of which the said order was passed.

We find no reason to interfere with the order passed by the learned Trial Judge. However, we make it clear that the observation made in the order dated 7th March, 2014 shall not influence the learned Trial Judge in disposing of the suit. The learned Trial Judge shall not be influenced by the observation made by us in this order.

With the aforesaid observation, the appeal stands dismissed.

However, there shall be no order as to costs.

We direct the learned Trial Judge to dispose of the suit as expeditiously as possible without granting any adjournment to either of the parties unless it is unavoidable.

A copy of this order may be forwarded to the learned Judge, IInd Bench, City Civil Court at Calcutta in T.S. No.2150 of 2011 for information and doing the needful.

(Uday Kumar, J.)

(Soumen Sen, J.)