

19.07.2022
KC(14-15)

F.M.A.T. 262 of 2022
Somnath Dutta and Anr.
-versus-
Pratim Kumar Daw
With
CAN 1 of 2022
With
F.M.A.T. 263 of 2022
Somnath Dutta and Anr.
-versus-
Pratim Kumar Daw
With
CAN 1 of 2022

Mr. Rohit Kumar Shaw.....For the appellants.

Mr. Siddhartha Banerjee.....For the respondent.

Both the appeals are admitted.

Considering the fact that the issue involved is very short, we propose to dispose of these appeals and the connected applications, dispensing with all formalities.

By the impugned order dated 8th June, 2022 in Title Suit No. 1189 of 2021 an Engineer Commissioner was appointed by the learned court below “to carry out a local inspection” of premises no. 2A and 2B, W.C. Bonerjee Street, Kolkata-700 006, more fully indicated in the schedule to an application under Order XXVI Rule 9 of the Code of Civil Procedure before the court below.

By the order dated 30th June, 2022 in Miscellaneous Case No. 2671 of 2022, the Engineer Commissioner was to submit his report by 4th August, 2022. Furthermore in order to promote “the interest of justice” and “to prevent the abuse of process of court” the appellants were directed not to make any further construction at the suit premises.

Learned advocate appearing for the appellants submits that his clients are engaged in necessary and bonafide construction work to prevent seepage of rain water during the rainy reason. Since such construction work has been stopped his clients are likely to suffer the effect of rain water seeping through the structure.

On a perusal of the impugned orders we find that they are preliminary - an Engineer Commissioner to visit and inspect the premises and to file a report in the court below. If during inspection parallel construction work is carried out, that is likely to affect the inspection and the state of the building preventing a proper report of the Commissioner being filed before the learned court below. That *prima facie* justifies the injunction on construction. In any case, the learned court below has fixed a relatively short returnable date for both the applications.

We are of the view that after inspection, any grievance of the appellants should be entertained by the learned court below and appropriate orders passed. The

appellants will be at liberty to take exception to the report to be filed by the Commissioner and also to present their view on the condition of the building. They shall also be permitted to lay a plan with regard to the construction work to be carried out before the court below for its approval.

If during this intervening period there is a likelihood of any damage to the property or inconvenience with regard to occupancy of the premises by seepage of rain water and that repair or construction work is necessary to prevent such occurrence, the appellants shall be at liberty to approach the court below for passing appropriate orders to remedy the problem.

If out of an emergent situation repair work is immediately necessary before the time required to approach the court, the parties shall have the liberty of approaching the Engineer Commissioner with a proposal to allow them to effect the necessary emergent repair work on such terms as the Commissioner will impose, before the matter comes up for consideration before the learned court below.

The Commissioner shall take all decisions at a meeting of the parties by properly maintaining minutes thereof. The Commissioner is directed to take expeditious action to comply with the order of the learned court below.

The appeals (F.M.A.T. 262 of 2022 and F.M.A.T. 263 of 2022) and the connected application (CAN 1 of 2022 and CAN 1 of 2022) are disposed of.

(I.P. MUKERJI, J.)

(SUBHENDU SAMANTA, J.)