

Item-24
sg

07-02-2022

Ct. 8

FMA 78 of 2022
CAN 1 of 2021
CAN 2 of 2022

Ankur Gupta & Anr.
Versus
Kanhaiya Lal Tulsyan & Ors.

(Through Video Conference)

Mr. Sabyasachi Chaudhury, Adv.
Ms. Sweta Gandhi Murgai, Adv.
...for the appellants

Mr. Jishnu Chowdhury, Adv.
...for the respondents

By consent of the parties, the appeal and the applications are taken up together and disposed of by this common order.

The suit property originally belongs to Tulsyan family. The defendants/appellants purchased a flat in the suit property under the SARFAESI proceeding and claimed that by virtue of such deed of conveyance, they have a right to go to the roof along with other co-owners of the said property.

Mr. Sabyasachi Chaudhury, learned Counsel appearing on behalf of the appellants submits that the learned Trial Court, while restraining the defendants from entering into the roof of the scheduled building, had overlooked that in the partition deed amongst the co-owners this roof right was reserved for all and accordingly, the co-owners from whom the defendants have purchased the said flat could not have been denied the right over the roof. It is submitted that the ex-parte ad-interim order was passed without taking into consideration the said partition deed, which has to be read along with other deed of

conveyance. It is further submitted that by reason of the ad-interim order of injunction, the defendants were prevented from carrying out repairs in the roof to avoid seepage of water.

Mr. Jishnu Chowdhury, learned Counsel appearing on behalf of the plaintiffs/respondent nos. 1 and 2 submits that the deed of conveyance clearly excludes any right over the roof and, accordingly, the defendants are not entitled to any such rights. However, it is fairly submitted that, for the better enjoyment of the suit property, if any essential repair is required to be done on the roof, the same may be carried out without damaging the said property. He further submits that the defendants can give an undertaking that they would not enter the temple or destroy the enjoyment of the temple by the other co-owners, although the right to such temple cannot be denied to the defendants. This arrangement can be purely temporary till the matter being heard out finally by the learned Judge, 6th Bench, City Civil Court.

We are considering the discretion exercised by the learned Trial Judge at the ex-parte ad-interim stage in relation to an application where the plaintiffs have clearly asserted that the appellants did not give any right to the defendants to access the roof. In this regard, our attention is drawn to paragraph 12 of the Deed of Partition and it is now being contended that the said clause has to be read with the purchase deed in order to ascertain the nature and extent of right conferred upon the appellants in relation to the suit property. This aspect of the matter, as it was ex-parte, was not considered by the learned Trial Judge.

We feel that this matter requires a deeper consideration in the

hands of the learned Trial Judge. However, in view of the fact that this order was passed on 3rd September, 2021 and we have been informed that this order has been extended thereafter, we direct the learned Judge, 6th Bench, City Civil Court to dispose of the injunction application within a period of eight weeks from the date of exchange of affidavits without granting any adjournment to either of the parties unless unavoidable.

In the event, the appellants have not filed any affidavit-in-opposition, they shall file such affidavits within seven days from date. Rejoinder, if any, be filed within a week thereafter.

The said direction is peremptory.

However, as urged by Mr. Jishnu Chowdhury, we permit the defendants to repair the roof in order to prevent seepage of water to the flat under the occupation of the appellants/defendants.

We appoint Mr. Biswabrata Basu Mullick, learned Advocate, as Special Officer under whose supervision the said repairing work should be done.

Both the plaintiffs and the defendants shall render all assistance to the Special officer in carrying out the directions of this Court. The Special Officer shall be entitled to a consolidated remuneration of Rs.25,000/- to be paid by the appellants. The Special Officer shall be entitled to take assistance of an engineer for the purpose of ascertaining the nature and extent of damage if the defendants insist before the commencement of the repairing work to be done at the roof in order to prevent the seepage of water to the flat of the appellants, otherwise, the said repairing work shall be carried out after intimating

to the respondents about the nature and extent of repair.

The Special Officer shall file his report in the pending proceeding before the learned Trial Judge, City Civil Court upon prior circulation of such reports to the parties.

The appeal, being FMA 78 of 2022 and the applications, being CAN 1 of 2021 and CAN 2 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.

(Ajoy Kumar Mukherjee, J.)

(Soumen Sen, J.)