

28.09.2022

Sl.No. 12

Ct.No.3

Amalranjan

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE

FMAT 409 of 2022

Rani Sati Metal Industries & Ors.

VS

M/s. Kaybee Industrial alloys Pvt. Ltd. & Anr.

With

CAN/1/2022

Mr. Sudip Deb

Mr. Riju ghosh

Ms. Saswati Chatterjee

...for the appellants/defendants

Mr. Pratyush Patwari

...for the respondent/plaintiff

Re: CAN/1/2022 (stay/injunction)

We admit the appeal.

As the point involved is very short, we
proposed to here it out.

Upon hearing learned counsel for the parties, we appoint Mrs. Shanti Das, a member of the Bar Association, mobile phone No. 9831471527, as Special Officer at a remuneration of 1200/- G.M.s to be paid by the appellants/ defendants to inspect the suit property in the presence of the parties and to ascertain the extent of possession of the appellants and also record any disputed area of possession.

The Special Officer is to file a report in the learned court below after signing and circulating copies thereof to the parties by 8th October, 2022.

The status quo as of today shall be maintained by the parties till inspection is made by the Special Officer and thereafter they shall maintain the status quo as found by the Special Officer till the application under Order 39 Rules 1 and 2 read with Section 151 of the CPC which is fixed on 31st October, 2022 for hearing is considered by the learned court below.

The point of maintainability as raised by Mr. Deb, learned advocate for the appellants before us that the suit is not maintainable inasmuch as a previous suit between the same parties for the self-same cause of action and reliefs was dismissed for default in the presence of the appellants/ defendants in that suit, at an earlier point of time, thereby barring the present suit, is kept open before the learned court below.

We also record that this assertion of Mr. Deb, is denied by learned counsel for the respondents.

The order dated 19th September, 2022 of the learned court below is modified to the above

extent only and is to be considered as an interim order, only, if it is sought to be used in other proceedings between the parties in respect of the same property.

The appeal and the connected application are disposed of with the above directions.

(Biswaroop Chowdhury,J.) (I. P. Mukerji,J.)