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MAT/3/2023
IA NO: CAN/1/2023
KANHAIYA SHAW
VS
THE STATE OF WEST BENGAL AND ORS.

Mr. Uday Shankar Bhattacharya,
Mr. Sukhendu Banerjee
..for the Appellant.

Mr. Himadri Sekhar Chakraborty,
Mr. Arunava Maiti
..for the State.

Mr. Wasim Ahmed,
Md. Kashif
..for the Intervenor.

By this intra court appeal the appellant (writ petitioner) has challenged the interlocutory order of the learned Single Judge dated 29th December, 2022 passed in WPA 29164 of 2022 whereby learned Single Judge has directed the appellant to amend the cause-title and add Zubaida Hamid as the additional respondent.

Submission of learned counsel for the appellant is that the order of the learned Single Judge suffers from error because the appellant is not claiming any relief against Zubaida Hamid and that the plea of the proposed intervenor i.e. Zubaida Hamid that no such property as Premises No.168A exists, is incorrect and that learned Single Judge has committed an error in not granting the interim relief which was prayed by the

petitioner.

Learned counsel for the State has submitted the report dated 09.01.2023 which states that there is no existence of Premises No.168A, Tiljala Road, Kolkata-700046.

Learned counsel appearing for Zubaida Hamid has also submitted that the Premises No.168A was a big piece of land which has been subdivided and the writ petitioner is in possession of B/168A/H/1 and Zubaida Hamid has obtained a decree against the said premises and that the petitioner by misquoting the premises in the writ petition wants to defeat the decree. He submits that Zubaida Hamid is a necessary party in the writ petition and has rightly been impleaded.

We have heard the learned counsel for the parties and perused the record.

By the interlocutory order of the learned Single Judge under challenge no rights of the parties have been decided.

A perusal of the writ petition filed by the appellant indicates that a plea has been raised therein that Zubaida Hamid had obtained fraudulent decree in respect of the Premises No.B/168A/H/1, therefore, certain proceedings have been initiated by the appellant in this regard. In spite of taking such a plea Zubaida Hamid was not impleaded in the petition.

Learned Single Judge has considered the plea of the parties and has directed impleament of Zubaida Hamid as the additional respondent. It lies within the power and discretion of the learned Single Judge to ascertain if a particular party is a necessary party and even in the absence of an application, direct impleadment of the said party.

In the facts of the present case, we do not find any error in such a direction of the learned Single Judge. The issue whether the two premises being Nos.168A and B/168A/H/1 are the different premises or the claim of the petitioner is in respect of which premise, can duly be considered by the learned Single Judge, if required.

So far as the plea of the petitioner that the learned Single Judge has not granted the interim relief, we have perused the order of the learned Single Judge and we find that the issue relating to the interim relief has neither been raised nor decided in the impugned order. Hence, it is open to the appellant to press the prayer for such a relief before the learned Single Judge.

We make it clear that any observation made in this order on merit is for the limited purpose of deciding this appeal and that will not affect the rights of the parties in any pending proceedings.

In the above circumstances, we do not find any

ground to interfere in the impugned order. The appeal is, accordingly, dismissed.

(Prakash Shrivastava, C.J.)

(Rajarshi Bharadwaj, J.)

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