

Item-6. 14-03-2023

FMAT 29 of 2023
CAN 1 of 2023

sg Ct. 8

Sandip Tiwari
Versus
Syama Prasad Mookerjee Port & Ors.

Mr. Sakya Sen, Adv.
Mr. Shuvasish Sengupta, Adv.
Mr. Biswajib Ghosh, Adv.
Mr. Abhishek Agarwal, Adv.
Ms. Rupa Singh, Adv.
Mr. Amir Ali, Adv.
...for the appellant
Mr. Snehashis Sen, Adv.
Mr. Aditya Sarkar, Adv.
...for the respondent no.1
Mrs. Rajashree Roy, Adv.
Ms. Oisani Mukherjee, Adv.
...for the respondent nos. 2-6
Ms. Sutapa Sanyal, Adv.
Mr. Anand Farmania, Adv.
...for the State

The appellant has filed an appeal against the judgment and order passed the learned Chief Judge, City Civil Court at Calcutta in a suit for declaration and permanent injunction filed by the appellant/plaintiff.

A suit for declaration presupposes that the appellant has legal right to continue in occupation of the property in question. A suit for declaration is filed when the plaintiff's title is in cloud. Briefly stated, the appellant is in occupation of the suit property in the capacity as a employee of one M/s. Indian Steel Equipment. In a proceeding initiated under Section 4 of the Public premises (Eviction of Unauthorised Occupants) Act, 1971 an order of eviction was passed against M/s. Indian Steel Equipment. The plaintiff has no independent right, title and interest over and in respect of the premises in question. The plaintiff claims its right through Indian Steel Equipment. Even if it is assumed that the

possession of the plaintiff is that of a sub-tenant, the creation of sub-tenancy pre-supposes a written consent from the landlord. The order of eviction of Indian Steel Equipment is binding on the appellant.

Mr. Sakya Sen, learned Counsel appearing on behalf of the appellant has relied upon a decision of a coordinate Bench of this Court in *Kusum Products Ltd. & Anr. vs. Life Insurance Corporation of India & Ors.* reported in *(2020) 4 CAL LT 403 (HC)* to argue that even if the appellant is a trespasser or is in unauthorized occupation, he is liable to be evicted in accordance with law meaning thereby, he would be entitled to a notice under Section 4 of the Public premises (Eviction of Unauthorised Occupants) Act, 1971 and a proper ceremonial proceeding has to be initiated for his removal.

We are unable to accept the said submission. We have invited the learned Counsel to prima facie establish at least its independent right in the suit property. We could not find any evidence of independent right of the appellant or even a semblance of right of the appellant to claim possession or remain in possession of the suit premises.

Under such circumstances, we feel that the appellant is not entitled to any order of injunction.

Moreover, the learned Counsel for the State has submitted that possession has been delivered in favour of the respondent and has filed a report of the officer-in-charge of the North Port Police Station to that effect. The said report is taken on record.

The learned Counsel for the appellant submits that at the time of taking possession by the State authorities, few belongings

had remained inside the room. The appellant shall on a written request being made to that effect indicating the articles or belongings lying inside the room shall be entitled to the return of belongings, if any, on proper identification in presence of the Port and Police authorities. A Minute should be drawn up in presence of the Port and Police authorities to be duly signed by the parties and shall be kept in the custody of the Port Authorities. A copy of the said Minute shall be supplied to the appellant.

With the aforesaid direction, the appeal and the applications stand dismissed.

However, there shall be no order as to costs.

(Uday Kumar, J.)

(Soumen Sen, J.)