

Item-2. 10-02-2023

sg Ct. 8

CPAN 147 of 2023
In
FA 120 of 2022
IA No: CAN 2 of 2022

Sharmistha Majumdar
Versus
Kriti Safui & Ors.

Mr. Debdutta Sen, Adv.
Ms. Suchishmitra Chatterjee, Adv.
Mr. Prasun Ghosh, Adv.
Mr. Malay Kr. Seal, Adv.

...for the petitioner

In Re: CPAN 147 of 2023

This is an application for contempt.

Mr. Debdutta Sen, learned Counsel for the petitioner submits that there is a violation of the Order dated 11th May, 2022. Mr. Sen further submits that in the earlier appeal arising out of the same suit, an Order was passed by a Coordinate Bench on 18th August, 2020 by which Kriti Safui and Reeta Safui have given an undertaking that the EMI of Rs.1,53,526/- per month for the flat mentioned in 3(a) of the said affidavit filed in the said proceeding shall be paid by them punctually. The coordinate Bench directed the trial court to hear out the interim injunction in accordance with law with full power to modify the interim order upon final hearing of the said application.

Thereafter, the final order passed by the trial court came in appeal before this Bench in FAT 110 of 2022.

While disposal of the appeal, we passed the following directions:

“In view of the admitted fact that the plaintiff is presently in possession of three flats, the possession of the plaintiff should

not be disturbed till the disposal of the appeal.

The appellant is restrained from dealing with and/or encumbering with and/or parting with the possession of any of the flats of Rana Safui till the disposal of the appeal.”

The appeal is still pending.

Mr. Sen, submits that the assurance given by the appellant in the earlier appeal that they would pay EMI of Rs.1,53,526/- per month punctually, has not been complied with and as a result whereof, the LIC Home Finance is trying to take possession of the property in question. It is further submitted that they are operating the bank accounts but not paying the EMIs.

The contention of the appellant cannot be decided in this contempt jurisdiction. Although we have observed that the possession of the plaintiffs in respect of three flats would not be disturbed but we have not passed any order recording any undertaking that the alleged contemnors would continue to pay EMI per month as observed by the earlier Division Bench in disposing of the earlier appeal in FMAT 67 of 2020 on 18th August, 2020 as modified on 9th October, 2020. The effect of non-payment of EMI by the respondents may affect the possession of the applicant but in absence of any specific order to that effect it cannot be said that the respondents have violated the order.

In view of the fact that specifically we have not passed any such order and the contempt jurisdiction should not be exercised unless the court comes to a satisfaction at the time of issuance of the Rule that there is any prima facie violation of the order, Rule should not be issued as a matter of course. It may be true that by reason of non-payment of EMIs, the possession of the plaintiff in respect of three flats may be precarious but in contempt

jurisdiction, we cannot go into such aspect of the matter as we have not specifically recorded any undertaking from the Safuis with regard to payment of EMIs.

Under such circumstances, we are unable to accept the submission of Mr. Sen and dismiss the contempt application.

However, this order shall not prevent the appellant to take out an appropriate application in accordance with law in the pending appeal seeking similar relief/s.

We make it clear that we have not gone into the merits of the matter and the observation made in this order shall not be construed as a decision on the merits of the claim made by the appellant with regard to consequences, the appellant is likely to suffer by reason of non-payment of EMIs.

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The appellant shall serve a copy of this application upon the advocate-on-record of the respondent within one week from date with an intimation that this matter shall be listed on 24th February, 2023.

(Sugato Majumdar, J.)

(Soumen Sen, J.)