

10-11. 23.08.2023
Court No.6
Tanmoy Ghosh

(Assigned)

FMAT 58 of 2023

Mahendra Devi Sureka & Ors.

-Versus-

Asha Bansal & Ors.

With

IA No: CAN/1/2023

With

FMAT 59 of 2023

Mahendra Devi Sureka & Ors.

-Versus-

Asha Bansal & Ors.

With

IA No: CAN/1/2023

Mr. Pranit Bag, Adv.,
Mrs. Arpita Saha, Adv.,
Ms. Rituparna Chatterjee, Adv.

...for the appellants.

Mr. Meghnath Dutta, Adv.,
Mr. Rajesh Upadhyay, Adv.

...for the respondents.

By consent of the parties, both the appeals and the connected applications are taken up together for hearing.

In these two first miscellaneous appeals, the orders dated January 13, 2023, passed by a learned Judge of the City Civil Court at Calcutta, in Title Suit No. 75 of 2023 and Title Suit No. 76 of 2023, are under challenge.

The respondents in these appeals have filed two suits in this Court for eviction of the appellant no.2

from the concerned premises, being C.S. No. 250 of 2022 and C.S. No. 249 of 2022 and also has prayed for recovery of mesne profits. The said two suits are being contested by the appellant no.2 in these appeals.

The present appellants have filed two suits in the City Civil Court, Calcutta, contending that the respondents in these appeals are threatening to dispossess them from the concerned premises forcibly, without following due process of law, notwithstanding pendency of the eviction suits in the High Court. The prayers in the two suits filed by the present appellants in the City Civil Court, Calcutta, are for a declaration that the defendants therein are not entitled to threaten the plaintiffs with their musclemen to take forcible possession of the suit premises and also permanent injunction restraining the defendants and each of them and their men, agents and servants from disturbing and/or interfering with the rights of the plaintiffs in respect of the suit property etc. In the said two suits, two applications under Order XXXIX, Rules 1 and 2 of the Code of Civil Procedure, 1908, were filed by the present appellants for *ad interim* injunction in aid of the final relief claimed in the two suits. Such prayer for *ad interim* injunction was refused by the two orders impugned in the present two appeals. The operative portion of the said two orders reads as follows:-

“As because the matter has already been filed before the Hon’ble High Court, Calcutta between the same parties, it will not be proper for this Court to entertain such separate

suits, and injunction petitions Whatever relief or objections the petitioners are having right now, they can ventilate the same directly before the Hon'ble High Court, Calcutta for relief. As such prayer for ad-interim injunction is considered and rejected in the light of discussion made above."

Being aggrieved, the plaintiffs in the two suits pending in the City Civil Court, Calcutta, have come up by way of these two first miscellaneous appeals.

We have heard learned Counsel for the parties at some length. We find no infirmity in the approach of the learned Court below. Admittedly, two suits for eviction of one of the appellants from the concerned premises are pending before this Court. The said suits are being contested by the appellant no.2 herein. Judicial propriety, therefore, warrants that the learned Court below should not interfere in the matter. This is exactly what the learned Judge has done.

We enquired of Mr. Dutta, learned Advocate representing the respondents in these two appeals, as to whether his clients have any intention of forcibly evicting the present appellants from the concerned premises. Mr. Dutta, on instruction, assures us that his clients have no such intention. His clients deny any allegation of force being applied or threats being meted out to the present appellants to dispossess them from the concerned premises. Learned Advocate says that had that been the intention of the present respondents, the two suits in the High Court would not have been filed by them.

We find no reason to interfere with the orders impugned in these two appeals.

The appeals being FMAT 58 of 2023 and FMAT 59 of 2023 along with all connected applications are dismissed in view of the observations made above.

Let urgent photostat certified copy of this order, if applied for, be made available to the parties, upon compliance with all requisite formalities.

(Arijit Banerjee, J.)

(Apurba Sinha Ray, J.)