

Item No.3 & 4.

**IN THE HIGH COURT OF JUDICATURE AT CALCUTTA
CIVIL APPELLATE JURISDICTION**

APPELLATE SIDE

HEARD ON: 05.04.2023

DELIVERED ON: 05.04.2023

CORAM:

**THE HON'BLE ACTING CHIEF JUSTICE T. S. SIVAGNANAM
AND
THE HON'BLE JUSTICE HIRANMAY BHATTACHARYYA**

MAT 431 OF 2020

Shiw Kumar Sharda.

Vs.

Kana Dutt & Ors.

And

F.M.A. 986 of 2021

WITH

I.A. NO.CAN 1 OF 2020 (Old CAN 2004 of 2020)

With

I.A. NO.CAN 2 OF 2020 (Old CAN 2955 of 2020)

Dilip Kumar Roy

Vs.

Kana Dutt & Ors.

Appearance:-

**Mr. Partha Sarathi Bhattacharya, Id. Senior Advocate.,
Mr. Falguni Bandyopadhyay,
Ms. Riya Ballav for the appellant (in MAT 431 of 2020).**

**Mr. Abhishek Gupta,
Ms. Ishita Roy ... for the appellant (in FMA 986 of 2021)**

**Mr. Amitesh Banerjee, Id. Senior Advocate,
Mr. Suddhadeb Adak,**

Mrs. Pramita Pal

... for the State.

**Mr. Saptarshi Roy,
Ms. Kakali Das Chakraborty**

... for the respondents/ writ petitioners.

JUDGMENT

(Judgment of the Court was delivered by T.S. SIVAGNANAM, ACJ.)

1. These intra-Court appeals are directed against the order passed by the learned Single Bench dated 14th February, 2020. The said order was passed in a writ petition filed by the respondent no.1 herein praying for the following reliefs:-

- (a) for issuance of a writ of mandamus directing the Commissioner of Police, Bidhannagar Police Commissionerate, Deputy Commissioner of Police, Zone -I, Bidhannagar Police Commissionerate and Inspector-in-Charge, 6th South Bidhannagar Police Station to restrain the 7th respondent, the appellant in FMA 986 of 2021, from entering into the premises at Block -CB, Plot No.13, Sector - I, Salt Lake City, Kolkata - 700 064,
- (b) issuance of a writ of mandamus to direct the police authorities to render necessary police protection to the writ petitioners so that the petitioners can enter into the premises freely so that no hindrances and impediment can be caused by the musclemen and bouncers deputed by

the 7th respondent / appellant in FMA 986 of 2021 in the vicinity of the said premises; and

- (c) mandamus to direct the police authorities to investigate into the complaint made by the writ petitioners and to file a report before this Court.

2. The learned Single Bench by the impugned order had virtually granted all the reliefs sought for by the writ petitioners and it is stated that the writ petitioners are in possession of the property in question. Admittedly, the genesis of the dispute is based upon an agreement entered into between the writ petitioners and the appellant in FMA 986 of 2021 concerning the subject property. There are inter se disputes, which are purely civil in nature. Therefore, we are of the clear view that the writ petition was not maintainable. We support such conclusion with the following reasons.

3. The first prayer sought for by the petitioners as mentioned above is seeking to restrain a private party, namely, the 7th respondent in the writ petition and the appellant in FMA 986 of 2021 from entering into the premises in question. Such relief cannot be granted in a writ petition and the remedy of the writ petitioners is elsewhere and not before the Writ Court.

4. The second prayer sought for by the writ petitioners is to direct the police authorities to give police protection so that the writ petitioners can enter into the property in question. To enable the police authorities to give police protection, the writ petitioners have to establish breach of peace. Admittedly, the genesis of the dispute is a civil dispute and the police cannot enter into the realm of a civil transaction unless and until a competent Civil Court issues a specific direction based on interim orders or a final judgement and decree. Therefore, to seek for issuance of a writ of mandamus without being supported by any order passed by the Civil Court could not be maintainable. In any event, the prayer sought for has worked itself out since pursuant to the direction issued by this Court, the writ petitioners have been put in possession. We, therefore, deem it appropriate that the said status quo should not be disturbed leaving it open to the parties to agitate their rights before the competent Civil Court.

5. With regard to the third prayer, the same has become infructuous as it is mentioned that the investigation has been completed and the final report has been filed and therefore, prayer (c) has become infructuous.

6. In the light of the above, while preserving the status quo with regard to the possession of the writ petitioners in the portion of the said premises, we leave it open to the parties to agitate all their rights before the appropriate forum. We are informed that the appellant in FMA 986 of 2021 has filed a civil Suit and the same is pending wherein the writ petitioners have been impleaded as defendants. The writ petitioners are entitled to defend the suit by raising all factual and legal contentions and any observation made in this order will not prejudice their rights in those civil proceedings. Similarly, the writ petitioners are at liberty to work out their rights if according to them, an agreement between the parties is no longer in force and we do not wish to make any observation in this regard as it may impinge upon the rights of the parties.

7. With the above observations, the appeals stand disposed of along with all the connected applications.

8. It is brought to our notice that the writ petitioners have filed an eviction suit in which the appellant in FMA 986 of 2021 is a defendant and the said appellant has filed a miscellaneous case in the said suit. We leave it open to the parties to agitate their respective stand before the Civil Court raising all factual and legal issues.

9. There shall be no order as to costs.

10. Urgent photostat certified copy of this order, if applied for, be furnished to the parties expeditiously upon compliance of all legal formalities.

(T.S. SIVAGNANAM)
Acting Chief Justice

I agree,

(HIRANMAY BHATTACHARYYA, J.)

NAREN/PALLAB (AR.C)