

21 19.07.23

Ct. No. 04

akd

F.M.A. 277 of 2023
CAN 1 of 2023

Mrs. Debjani Banerjee.
Vs.
Mrs. Alo Roy Chowdhury.

Mr. Debnath Ghosh,
Mr. Biswaroop Mukherjee,
Mr. Avijit Dey.
... for the appellant.

Ms. Sutapa Sanyal,
Mr. Triptimoy Talukder,
Mr. Diptimoy Talukder,
Mr. Abhiraj Tarafdar.
... for the respondent.

It is an unusual case of licensor and licensee where the licensee is intended to give up the possession but alleged that the licensor is putting obstacles in not giving up the possession in his favour.

A suit for recovery of possession upon revocation of licence is filed and in such suit an application for temporary injunction was taken out by the defendant/appellant/licensee praying that the plaintiff/respondent/licensor be restrained from creating any obstruction in peaceful enjoyment of the suit property.

Obviously the intention as on the date of filing an application for temporary injunction was that the appellant intends to use and enjoy the said property but when the matter is moved today, the learned Counsel appearing for the appellant, on instruction, submits that his client is no longer interested in continuing with the possession of the suit property and, in fact, intended to give up the same upon taking out the articles lying therein. The nature of the articles indicated before us being the apparels, utensils and other materials of daily utilities for sustenance of life in a peaceful manner.

The respondent argues that last payment was made in the month of October, 2019 and thereafter no payment has been made till date.

The submission is advanced on behalf of the appellant that he intended to give up the possession in the month of November, 2019, but the respondent did not accept the said possession. On the other hand, the respondent disputes the aforesaid contention and submits that there was no attempt on his part to hand over the said possession.

In view of the stand having taken before us, we do not find any obstacle on the way of the appellant in giving up the possession in favour of the respondent. However, we cannot overlook and ignore the fact that the respondent has been deprived of the rent/licence fees in whatever term it is intended by the parties because of the overstay in respect of the suit property.

To strike the balance between the rights of the parties in order to secure the equilibrium into it, we dispose of the instant appeal directing the appellant to give up the possession to the respondent in presence of their respective Counsels on or before 31st July, 2023. The respondent shall not create any obstruction in taking out the articles lying inside the suit premises, which shall be subject to the condition that the appellant shall deposit a sum of Rs.9,90,000/- (being an amount calculated from the month of November, 2019 till July, 2023 at the rate of Rs.22,000/- per month) with the Trial Court within a week from date.

Upon deposit of the aforesaid amount and handing over the possession to the respondent, if the respondent so chooses to proceed with the suit, the determination of the said suit would be restricted to the ascertainment of the mesne profit / damages as claimed.

In the event of deposit of the aforesaid amount within the time as indicated hereinabove, the Trial Court is directed to invest the said amount in an interest bearing Fixed Deposit Scheme in any nationalized bank and shall continue to renew the same until further order is passed in the said suit.

With the above observations the appeal and connected application are disposed of.

(Harish Tandon, J.)

(Prasenjit Biswas, J.)