

12.10.2023
Item No.9
gd/ssd

MAT/607/2023
IA NO: CAN/2/2023, CAN/3/2023, CAN/4/2023
MANOJ SAHA
VS
KALYANI SAHA AND ORS.

Mr. Debasis Kar,
Mr. Husen Mustafi
..for the Appellant.

Mr. Amitesh Banerjee.
Ms. Ipsita Banerjee,
Mr. Tarak Karan
..for the State.

1. This intra court appeal has been filed against the order dated 24.01.2023 in WPA 24299 of 2022.

2. The said writ petition was filed by the respondent i.e. the mother of the appellant alleging that the appellant has been torturing her and her husband.

3. The court after taking into consideration observed that if there is any civil dispute with regard to the title of the property, the same has to be dealt with in appropriate civil proceedings.

4. The court directed the respondent police to register an FIR in respect of the writ petitioner's complaint against the appellant alleging assault and after enquiry and investigation, considering the medical report which was annexed to the writ petition.

5. The appellant was warned against causing any harm to the writ petitioner/mother and there was

also an order that he shall not contact his parents and if he has any grievance against the parents, he may be moved out from the residence by the police. The appellant admits that now he has been moved out of the premises. The property in question is said to be owned by the respondent mother. However, the appellant would contend that the construction was put up by him in the said property.

6. The learned advocate for the appellant would submit that in a writ petition where there is a pure private dispute and a family matter, direction cannot be issued for eviction of any party and in support of such contention, reliance was placed on the decision reported in 2023 (1) Cal.H.C.N. 480 (DB).

7. The appellant admits that he has been moved out of the property.

8. In such circumstances, if we are to issue any direction to restore the appellant inside the premises, we will also be falling foul of the orders passed by the Division Bench in the reported decision in 2023 (1) Cal.H.C.N. 480 (DB).

9. Therefore, if the appellant claims that the building was constructed from his funds, the appellant has to approach the civil court and seek for appropriate reliefs and in this appeal no direction can be granted to put back the appellant in possession of the property.

10. However, considering the relationship of the parties, we give liberty to the appellant to apologies to his parents and if the parents agree to take him back inside the premises, it will be well open to the appellant to move inside the premises subject to the consent of his parents.

11. With the above observations, the appeal stands dismissed.

(T. S. SIVAGNANAM)
CHIEF JUSTICE

(HIRANMAY BHATTACHARYYA, J.)