

27-07-2023
ct no. 13
sl. no.8
pk

FMAT 286 of 2023
CAN 1 of 2023

Roma Mullick and Anr.

-Versus-

Md. Yasser Siddiqui and Ors.

Ms. Debjani Sengupta
Mr. Rajib Mullick
Ms. Ayantika Saha
Ms. Shukla Samaddar

...for the appellants.

Mr. Syed Nurul Arefin
Mr. Rahul Singh
Ms. Rashri Binayak

... for the Respondents.

1. The appeal is directed against an order of injunction passed by the 11th Bench of the City Civil Court at Calcutta on 12th May, 2023 in T.S. No.2359 of 2022. By the order of injunction the defendants/appellants landlords have been restrained from creating third party interest in the suit premises and were directed not to change the nature and character of the suit property.

2. The suit was filed by the plaintiffs/respondents under section 6 of the Specific Relief Act, 1963. The plaintiffs/respondents claim to be the son and wife of the late Md. Yunus Siddiqui, the original recorded tenant, who died in 2018.

3. The suit property is a shop room and the appellants/defendants claim that the same has remained unused either by the original tenant or the respondents since 2010. This has been denied by the respondents.

4. Be that as it may, it appears that no steps whatsoever had been taken by the appellants to claim possession of the allegedly abandoned suit premises by the original tenant, till date. The plaintiffs/respondents claim to be legal heirs of the original deceased tenant and their right is recognised under the provisions of the West Bengal Premises Tenancy Act.

5. The argument of the appellants are as follows:-

(a) The original tenant has not used the property since 2010.

(b) There is an abandonment of the premises by the original tenant up to 2018.

(c) The respondents have never raised any claim in respect of the suit property nor were in possession.

6. These arguments are, at best, a defense in the main proceeding under section 6 of the Specific Relief Act, 1963 filed by the respondents.

7. The interim order passed by the Court below is subject to the final result of the main proceeding under Section 6.

8. In the above circumstances, this Court finds no infirmity in the impugned order.

9. The instant appeal is dismissed. In view of dismissal of the appeal, connected application, if any, is also dismissed.

10. It is, however, directed that T.S. 2359 of 2022 under section 6 of the Specific Relief Act, 1963 shall be disposed of as expeditious as possible preferably within a period of three months from the date of communication of a copy of this order.

11. Written statement has been filed. The parties shall complete inspection and discovery within a period of ten days from date of communication of a copy of this order.

12. The suit shall be fixed for framing of issues within a period of one week thereafter.

13. Trial shall commence immediately after issues are framed. Hearing shall be conducted on day to day basis and no unnecessary adjournment shall be given to any of the parties.

14. All parties are directed to act on a server copy of this order duly downloaded from the official website of this Court.

(Rajasekhar Mantha, J.)

(Supratim Bhattacharya, J.)