

07 **12.12.
2023**

Ct. No. 04

ab

**FMAT 308 of 2023
IA No. CAN 1 of 2023**

**M/s. Swan Construction
Vs.
Awadhesh Kumar Agnihotri and others.**

**Mr. Debjit Mukherjee,
Ms. Susmita Chatterjee,
Ms. Dipanwita Ganguly,
Mr. Kaustav Majumdar,
Ms. Sinjini Chakraborty,
Ms. Priyanka Jana.**

... for the appellant.

**Mr. Prantik Ghosh,
Mr. Amit Karmakar.**

... for the respondents.

This appeal arises from an order dated 30th June 2023 passed by the learned Civil Judge (Senior Division), 2nd Court at Barasat, North 24-Parganas in Title Suit No. 536 of 2019 whereby and wherunder an application under Order XXXIX Rule 4 of the Code of Civil Procedure filed by the appellant herein was rejected on contest.

The plaintiff/respondent filed a suit for partition and separation of shares claiming his undivided right, title and interest, which he inherited on the death of his wife as heir under Section 15 of the Hindu Succession Act. All other co-sharers including the son of the plaintiff/respondent entered into an agreement for development of the said joint property, which contained the specific allocation. Since the plaintiff/respondent was not a contracting party, he defied the said development agreement and instituted a suit for separation of his share from the other co-sharers.

The Trial Court passed an injunction directing *status quo* to be maintained with respect to nature, character and construction at the suit premises and on the notices being served, the defendant/appellant filed the aforesaid application for vacation/variation and

setting aside of an *ex parte* ad interim order of injunction.

In course of hearing of the instant appeal, the proposals and counter-proposals were made by the plaintiff/respondent as well as the said developer and it was agreed that the plaintiff/appellant along with his son shall be allotted a flat measuring 900 sq.ft. covered area and shall further be provided 100 sq.ft. covered area for the purpose of a shop.

The plaintiff/respondent has written a letter to his Advocate-on-Record of this Court on 25th August 2023, signifying his intention as indicated above. The defendant/appellant has agreed to provide and allot such portion i.e. the flat containing 900 sq.ft. covered area and a shop measuring 100 sq.ft. covered area at the proposed building.

In view of the above, the plaintiff/respondent submits that there is no point in keeping the order of injunction operative and, therefore, on such basis the appeal may be disposed of.

In view of the above, the order of injunction passed by the Trial Court is hereby set aside.

Both the parties are directed to approach the Trial Court for seeking a dismissal or disposal of the suit on the basis of a compromise/agreement entered into in course of the instant appeal, which shall not exceed beyond two weeks after reopening of this Court following Christmas Vacation.

Let the original letter issued by the plaintiff/respondent to his Advocate-on-Record, Mr. Amit Karmakar, and filed in Court today be kept with the record. The defendant/appellant has also issued a letter to his Advocate-on-Record signifying his intention to agree with the proposals of the plaintiff/respondent. Let both the letters be kept in a sealed envelope.

With these observations, the appeal is disposed of.

In view of the disposal of the appeal itself, the connected application being CAN 1 of 2023 has become infructuous and the same is also disposed of.

(Harish Tandon, J.)

(Madhuresh Prasad, J.)