

14.07.2023
Court No.13
Item No.3
pk

FMAT 326 of 2023

**Smt. Chandana Saha and another
Vs.
Sri Ashok Kumar Roy and others**

Mr. Biswaroop Bhattacharyya,
Mr. Varun Kothari,
Ms. Sayani Das,
Mr. Arya Bhattacharyya,
Mr. Snehasish Dey,

...For the appellants.

Mr. Srinjay Das,
Mr. Arvind Kumar Singh,
Mr. Sumit Kumar Dey

... For the respondents.

1. This appeal is directed against the judgement and order dated 6th July, 2023 whereby the appellants/defendants' application under Order 39 Rule 4 of the Code of Civil Procedure was rejected and ad interim order passed on 5th April, 2023 was extended until 26th September, 2023.

2. The court below has not yet disposed of the application under Order 39 Rule 1 and 2 of the Code of Civil Procedure, which is pending consideration.

3. The dispute between the parties is regarding the right of the plaintiffs to construct additional toilets within their premises. The appellants/defendants have contended that such right interferes with the common rights reserved to other owners and residents of the building.

4. It is also argued by Mr. Bhattacharyya, learned counsel for the appellants that the internal repairs being effected by the respondents/plaintiffs is in fact an addition and alteration within the premises effecting seriously prejudicing the water and sewerage facilities in the building as sanctioned by the KMC.

5. Counsel for the plaintiffs/respondents, however, denies the same and submits that they have purchased incomplete property on the second floor of the building and are entitled, even without the concurrence of the KMC, to effect internal repairs. Even otherwise the plaintiffs/respondents submit that they have a sanction plan from the KMC to effect such construction.

6. The aforesaid are mere observations of this Court for ascertaining the scope of the lis between the parties and shall not construe as any final pronouncement.

7. Having heard the counsel for the parties, this Court is of the view that the rights of the parties in the instant appeal would be appropriately addressed by directing the learned Judge, 13th Bench, City Civil Court at Calcutta to hear and dispose of the application under Order 39 Rule 1 and 2 within a period of ten days commencing from 26th July, 2023.

8. The date fixed by the court below on 26th September, 2023, shall accordingly stand preponed.

9. It is made absolutely clear that the findings of the Court below in the impugned order disposing of the application under Order 39 Rule 4 shall not prevent the court below from taking a different view if so permissible after hearing the counsel of learned advocates for the plaintiffs and the defendants.

10. The Court shall proceed to dispose of the application under Order 39 Rule 1 and 2 uninfluenced by any observations made herein above or its finding under Order 39 Rule 4.

11. Since the plaintiffs' application under Section 151 has been allowed by the court below in aid of the ad interim order already passed on 05.04.2023 (supra), this Court, in the interest of justice, is inclined to stay the order passed by the Court below directing the Police to assist the plaintiffs to obtain water connection.

12. The application under Section 151 of the Code of Civil Procedure shall be heard and disposed of along with the application under Order 39 Rule 1 and 2.

13. In view of the above, the instant appeal and the connected application are disposed of.

14. There will be no order as to costs.

15. 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.)