

31-07-2023
ct no. 13
sl. no.12
pk

FMAT 327 of 2023
CAN 1 of 2023

Nasir Hossain

-Versus-

Md. Salim Khan and others

Md. Farhaduddin,
Mr. Siddhartha Ruj,
Mr. Rahul Verma

...for the appellant.

Mr. Subir Banerjee,
Mr. D. Nandi

... for the respondents.

1. The appeal is directed against an ex parte interim order dated 28th June, 2023. The plaintiffs/Appellants had filed Title Suit No. 1159 of 2023 before the IXth Bench of the City Civil Court at Calcutta, seeking a declaration in the plaint that they are tenants in respect of a shop room. Permanent injunction has been sought in the plaint.

2. In aid of the prayer for declaration and injunction, an application under Order 39 Rule 1 and 2 was filed and an ex parte order of status quo has been passed on 28th June, 2023 by the Court below, which is impugned herein.

3. Counsel for the defendant/appellant would argue before this Court that the defendant no. 7 as promoter of the premises, obtained sanction plan from the KMC and is effecting construction on the property. He claims to have offered the plaintiffs a

shop room in the new premises which has been declined. It is also submitted that the plaintiffs have tried to make out a different and contradictory cases in the plaint.

4. It is submitted by the plaintiff/respondent that under the garb of construction the defendant/appellant is trying to unlawfully dispossess and/or evict the plaintiff.

5. Having heard the counsel for the parties, this Court is of the view that since the impugned order has been passed ex parte, the defendant no. 7 and the other defendants may apply in the court below for vacating the interim order within a period of four days from date with prior service to the respondents/plaintiffs.

6. Upon receiving the application, the same may be treated as affidavit-in-opposition to the application of the plaintiffs under Order 39 Rule 1 & 2 of the writ petition. The respondents/plaintiffs may file a reply to the application under Order 39 Rule 4 within a period of two days thereafter. No new document shall be disclosed in the reply of the plaintiffs.

7. The court below or the Bench-in-Charge of the 9th Court of the City Civil Court at Calcutta shall thereafter dispose of the said application under

Order 39 Rule 1 & 2 and the application under Order 39 Rule 4 within a period of two weeks thereafter. No adjournment whatsoever shall be allowed to any of the parties.

8. In the event of any illness or ailment of any of the advocate on either side, appropriate alternative arrangements shall be made.

9. With the aforesaid observations, the instant appeal and the connected application are disposed of.

10. It is made absolutely clear that the court below shall proceed in the matter uninfluenced by any observation made by this Court or in the memorandum of appeal or stay application.

11. There will be no order as to costs.

12. 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.)