

11 17.01.2023
AN Ct. No. 08

FMAT 1087 of 2015
With
IA No. CAN 1 of 2015 (Old No. CAN 9938 of 2015)

Tapas Kumar Maity
vs.
Shaila Motors (P) Ltd. & ors.

Mr. Amarnath Sukul

... for the appellant

The appeal is defective. No attempt has been made to cure the defects inspite of order dated 15.11.2021. We could have dismissed the appeal for non-removal of the appeal as peremptory in nature.

It is submitted that the learned counsel representing the appellant has died in the meantime. However, we find that Mr. Amarnath Sukul is the advocate on record on behalf of the appellant. The appeal is arising out of an order passed by the learned civil judge, senior division, Tamluk, Purba Medinipur in connection with an application filed on 27.09.2014 under Order XXXIX Rule 1 and 2 of the Civil Procedure Code read with Section 151 of the Civil Procedure Code. The order was passed on a contested hearing. The learned trial court has passed an order directing both the parties to make status quo in respect of the nature and character to the property to the disposal of the suit.

Learned counsel for the appellant has submitted that the suit is still pending. We have carefully perused the order under appeal. The learned trial court considered the

documents produced by the appellant as well as the respondents at the time to hearing of the injunction application. Learned trial court in granting aforesaid relief has prima facie arrived at a finding that the suit property being 36 was a property purchased by the defendant no. 2 and defendant no. 1 by two registered deeds of sale dated 24.08.1994 and 07.10.1994. The plaintiff no. 1 and defendant no. 1 were the original defendant Directors of the Shaila Motors Pvt. Ltd. Learned trial judge has also taken into consideration the report filed by the Commissioner in respect of the suit premises. The learned trial court was on the basis of the report opined that it can be safely presumed that there is a show room and workshop of two wheelers and four wheeler motor cars in the suit premises. The discretion exercised by the trial court in directing the parties to make the status quo does not suffer from any perversity or illegality. Unless the decision of the learned trial judge is found to be irrational or perverse, the discretion exercised by the learned trial judge under Order XXXIX Rule 1 and 2 should not be interfered with by the first appellate court. We would have expected that the appellant would have taken steps and would request the learned trial court to dispose of the suit on merits. We enquire about the present status of the suit. The learned counsel for the appellant however has failed to apprise us with regard to the present status. Be that as it may, while disposing of this appeal, we request the learned civil judge, senior division, 2nd Court, Tamluk, Purba Medinipur to

dispose of the suit preferably within a period of six months from the date of communication of the trial. The learned trial judge shall not grant any adjournment to the parties unless there are unavoidable circumstances. Learned counsel for the appellant/defendant no. 1 is directed to communicate this order to the respondents. A copy of this order shall also be forwarded by the Registrar (L. & O.M.) to the learned trial judge for information and doing the needful.

Accordingly, the instant appeal stands disposed of. Consequently, the connected application also stands disposed of.

(Uday Kumar, J.)

(Soumen Sen, J.)