

D/L
Item No. 17
22.12.2023
KOLE

**FMAT 569 of 2023
With
IA CAN 1 of 2023**

**Khushbu Varma
-Vs.-
Rajkumar Varma & Anr.**

*Mr. Jogendra Pandey,
Mr. D. Ganguli,
Mr. A. Saha,
Mr. S. Dutta,*

...for the appellant.

*Mr. Purnendu Das,
Mrs. G. Mallick,*

...for the respondent no. 1.

This First Miscellaneous Appeal is directed against an order dated December 1, 2023, passed by the learned City Civil Court in Title Suit No. 2378 of 2023. By the order impugned, the appellant herein has been restrained from entering the premises of the respondent/plaintiff. The operative portion of the order reads as follows”-

“The plaint mentioned defendants are hereby restrained to enter into the premises of the plaintiff so that he must not be provoked & feel tortured mentally. Defendants are free to remove their personal effects from the place of their parents if they wish so and must not enter in the house of their parents till four (04) weeks from now.”

It was an *ex parte ad interim* order.

The prayer in the injunction application reads as follows:-

“a) To issue a rule calling upon the defendants/opposite parties to show cause as to why they shall not be restrained by the order of temporary injunction restraining the defendants/opposite parties and their men and/or agents from ousting the

plaintiff/petitioner from the suit property or from inducting any tenant or tenants or licensee or licensees on and over the schedule premises and from interfering with the peaceful and the peaceful use, occupation, enjoyment and particularly described in the schedule below property by the plaintiff/petitioner by the plaintiff/petitioner and for a further order of injunction restraining the defendants/opposite parties from making attempts to change the nature and character of the schedule property and illegally damage the property and others without due process of law or an order of injunction restraining the defendants/opposite parties and/or otherwise to maintain status quo in respect of the suit property till disposal of the injunction application.”

The order impugned is clearly beyond the scope of the prayers. The plaintiff did not ask for any order to oust the present appellant from her matrimonial home.

The order under appeal cannot be sustained and is set aside. Learned Trial Court is requested to decide the injunction application on merits upon hearing all concerned parties as expeditiously as possible and preferably within a period of two months from the date of communication of this order. We have not gone into the merits of the case. The learned Trial Court shall decide the injunction application independently without being influenced by any observation in this order.

The appellant herein, who is the respondent no. 1/defendant no. 1 before the Learned Trial Court, will be at liberty to file her written objection to the injunction application within a week after the Christmas Vacation.

The appeal and the connected application are, accordingly, disposed of.

Urgent photostat certified copy of this order be supplied to the parties, if applied for, as early as possible.

(Arijit Banerjee, J.)

(M. V. Muralidaran, J.)