60. **21.12.2023**
Court No.6
Tanmoy Ghosh

FMAT 572 of 2023

Salasar Towers Private Limited
-Versus-
Eyelid Mercantiles Private Limited

With
IA No: CAN/1/2023

Mr. S.N. Mookherjee, Ld. Sr. Adv.,
Mr. Ratnanko Banerji, Ld. Sr. Adv.,
Mr. Soumya Majumder, Adv.,
Mr. Jishnu Chowdhury, Adv.,
Mr. Shounak Mitra, Adv.,
Mr. Indrajit Banerjee, Adv.

…for the appellant/defendant.

Mr. Rupak Ghosh, Adv.,
Mr. Siddhartha Datta, Adv.,
Ms. Trisha Mukherjee, Adv.,
Mr. Raunak Bose, Adv.

…for the respondent/plaintiff.

In this First Miscellaneous Appeal, an order dated December 1, 2023, passed by the learned City Civil Court at Calcutta, on an application under Order XXXIX Rules 1 and 2, read with Section 151 of the Code of Civil Procedure, 1908, filed by the respondent herein in its suit being Title Suit No. 2382 of 2023, is under challenge at the instance of the defendant in the suit. .

The matter relates to premises no. 46B, Chowringhee Road, Kolkata – 700071, a property commonly known as “King’s Court”. The appellant/ defendant admittedly is in possession of approximately 50% of the premises on the strength of registered conveyances executed in its favour. The respondent/

plaintiff says that it is in possession of the remaining 50% of the premises and has been put in possession on the basis of an Agreement for Sale executed in its favour by Dunlop India Limited, which is still the registered owner of the portion of the premises under control of the respondent. The premises consist of flats and garages. The flats and garages which are in possession of the appellant are mentioned in the pleadings and they are quite distinct from the flats and garages which the respondent/plaintiff claims to be in possession of.

Dunlop is in liquidation. The appellant herein claims a right of pre-emption in respect of Dunlop's portion of the premises. The respondent/plaintiff says that the appellant does not have any such right of pre-emption and cannot exercise any such right. This is one of the issues in the suit filed by the respondent/plaintiff.

From the order impugned before us we find that the learned Trial Court has perhaps not fully comprehended the case of the plaintiff as made out in the plaint. The two major points urged by the plaintiff are firstly, the transfer of the portion in favour of the appellant herein by its predecessor-in-interest, M/s. Guest Keen Williams Limited (in short, 'GKW'), is void being contrary to the provisions of the erstwhile Sick Industrial Companies Act as also the agreement between Dunlop and GKW executed in the year 1953. The second point is that the appellant/defendant has no right of pre-emption. Right of pre-emption cannot devolve on multiple parties. The plaintiff prayed for an order to protect the portion in its possession from unlawful interference by the defendant (appellant herein). The learned Judge passed an order directing the parties to maintain *status quo* as to the nature, character and possession of the suit property as on the date of the order. The suit property, as would appear from the Schedule to the plaint, is admittedly in the possession of the appellant/defendant. There could be absolutely no reason for the learned Judge to injunct the defendant from enjoying what is admittedly its property. We would have understood if an order was passed restraining the defendant from disturbing peaceful possession of the plaintiff's portion. However, restraining the defendant from exercising legal rights in respect of its own property is contrary to all logic.

The order under appeal cannot be sustained. The impugned order is set aside.

The application of the plaintiff is pending before the learned Trial Court. The question of the defendant exercising any right of pre-emption in respect of Dunlop's portion of the property which is presently in the possession of the plaintiff would arise only at the time of sale of that portion in the liquidation proceedings. We are told that the sale proceedings have been adjourned till February 17, 2024, by a co-ordinate Bench of this Court. We request the learned Trial Court to decide the plaintiff's application by the middle of February, 2024.

The defendant would be at liberty to file its written objection to the injunction application by January 10, 2024. Rejoinder thereto, if any, be filed by January 17, 2024. Parties would be at liberty to mention the matter for early hearing.

We clarify that all observations made in this order are *prima facie* and only for the purpose of disposing of the present appeal. The learned Trial Court shall decide the plaintiff's application in accordance with law without being influenced by any observation in this order.

The appeal being FMAT 572 of 2023 and the connected application being IA No: CAN/1/2023 are disposed of.

Urgent photostat certified copy of this order, if applied for, be made available to the parties upon compliance with all requisite formalities.

(Arijit Banerjee, J.)

(M.V. Muralidaran, J.)