

21.08.2024
(D/L-6)
Ct. No.4
(Naba)

**F.M.A.T. 37 of 2024
With
CAN 1 of 2024**

**Ramesh Kumar Kejriwal
Vs.
Mahesh Kumar Kejriwal & Anr.**

Mr. Jishnu Chowdhury,
Mr. S. Mukherjee,
Mr. A. Bagaria,
Mr. Devansh Santhalia.
... for the Appellant.

Mr. Jishnu Saha, Sr. Adv.
Mr. Aniruddha Mitra,
Mr. Debdut Mukherjee,
Mr. Kaushik Banerjee,
Ms. Rashmita Sen,
Ms. Sarbani Ghoshal.
... for the Respondents.

1. The appeal is admitted.
2. The appellant is the defendant no.3 in the suit.

The suit for partition of the first schedule property, namely, Flat No.3A and 3B at premises No.57/G, Ballygunge Circular Road, Kolkata which according to the plaintiff's case was jointly purchased by the plaintiff along with the defendants who are co-sharers. An application was filed by the plaintiff in the suit for restraining the defendant no.2 from making any construction or change in the nature, character and usage of the property in question.

3. The learned senior counsel for the appellant submits that it was the specific case of the plaintiff before the trial court in the application filed under Order 39 Rules 1 and 2 that the defendant no.2 through his agents has changed the nature, character and usage of the rooms in the flat in question and that construction was going on without any consent or authorisation.
4. The specific alteration alleged in the application along with the sketch map appended thereto was not denied or disputed by the defendant.
5. The defendant no.2 took a stand that since plaintiff and defendants are joint owners having undivided share, they had agreed that the two flats bearing flat no. 3A and 3B be converted into a joint property and a single residence for all the parties. He further denied the allegations made by the plaintiff.
6. Considering the rival submissions, the court passed an order on 15.05.2014 directing both the plaintiff and defendant no.2 to maintain *status quo* in respect of the nature, character and usage of the first schedule property till disposal of the suit.
7. Immediately after passing of the order of injunction, plaintiff alleged that he got knowledge that the defendant no.2 was making

endeavours to violate the order of injunction and for implementation of the same he sought police assistance. The application under Section 151 C.P.C. filed by the plaintiff was rejected on contest and carried in revision before this Court. The revisional application was also rejected with liberty to the plaintiff to pursue remedy under Order 39 Rule 2A. The proceedings under Section 151 C.P.C. and the revisional application were both disposed of in the year 2014 itself.

8. Nearly four years elapsed thereafter, but no steps were taken by the plaintiff to pursue remedy under Order 39 Rule 2A. However, an application under Order 39 Rule 2A was filed by the defendant no.3 to the suit, who is the appellant in the present proceedings, alleging breach of the injunction order dated 14.05.2014. It is the case of the appellant that when defendant no.1 passed away they had gone to the flat in question when they discovered that substantial alterations have been made in the flat causing a breach of the order of injunction dated 14.05.2014 and for which the defendant no.2 is liable to penal consequences under Order 39 Rule 2A.
9. The trial court has rejected the application on the ground that the plaintiff has failed to prove

that there was any breach necessitating the exercise of jurisdiction under Order 39 Rule 2A.

10. The learned counsel for the appellant submits that the context in which the injunction was passed, can be gathered from the application filed by the plaintiff and the written statement filed by the defendants, wherein the allegations have not been denied or disputed.

11. From plain reading of these two pleadings including the sketch map appended to the application, it can be gathered that nature, character and possession as obtaining on that date as per the uncontroverted averments made in the application is the position, *status quo* of which was required to be maintained by the parties in terms of the order of injunction.

12. In his application under Order 39 Rule 2A, the defendant no.3 alleged that the defendant no.2 has changed the entrance of the plaintiff's bedroom, converted the common kitchen into a sitting room and the plaintiff's bedroom wall has been demolished; merging the room to the hall outside. These substantial alterations have caused breach of order of injunction and in support of such allegation there was sufficient material in the form of the map appended with the application filed under Order 39 Rules 1 and

2, which the court has overlooked. The Court therefore, has wrongly arrived at a conclusion that there was no proof of breach of the order of injunction.

13. The learned counsel for the defendant no.2 on the other hand denies that he at any stage before the Trial Court has made any admission regarding the alleged alteration being undertaken by him with respect to the suit property after passing of the interim order of *status quo*. It has been the specific case of the defendants that the alleged changes being complained of by the plaintiff accrued much prior to passing of the order of injunction dated 14.05.2014.

14. In the proceedings under Order 39 Rule 2A, the plaintiff has neither given any oral or documentary evidence in support of any breach nor he has asserted with certainty regarding the nature and particulars of the alleged violation of the order of *status quo* dated 14.05.2014. In paragraph 11 of his application the defendant no.3 has himself admitted that he could not ascertain the particulars of violation and sought leave to amend the same by way of modification upon a “truthful and complete” disclosure of such violation by the opposite party.

15. Under such circumstances where there is no irrefutable, wilful and deliberate breach or violation of the injunction, there was no occasion for the trial court to pass order in exercise of jurisdiction under Order 39 Rule 2A.
16. The law in this regard is well settled that before a party can be visited with penal consequences under Order 39 Rule 2A, there must be cogent and sufficient evidence in support of the factum of wilful and deliberate violation/breach of the injunction. There being no evidence whatsoever, as in the present case, the Court has rightly declined the prayer under Order 39 Rule 2A.
17. Having considered the rival submissions and on going through the applications and reply, we are inclined to accept the submissions advanced on behalf of the defendants. From bare perusal of the application under Order 39 Rule 2A, we find that in fact the applicant/defendant no.3 has admitted in paragraph 11 that he is not fully aware of the particulars of violation, of the order of *status quo*. The allegation of violation has specifically been denied by the present appellant in their objection. In view of the assertion by the applicant, and denial of the same by the defendant, it was incumbent upon the applicant

to adduce evidence in support of his allegations and prove the alleged violation of injunction.

18. We find that no evidence whatsoever has been adduced in the proceedings under Order 39 Rule 2A. Reliance being placed by the plaintiff on the averments made in the application for injunction, in our opinion does not inure to the petitioner's benefit which is obvious from the averments made therein.
19. Another relevant aspect of the matter is that the order of *status quo* was obtained by the plaintiff who has not come forward to allege any breach thereof, and it is defendant no.3 in the suit who has filed the application under Order 39 Rule 2A CPC.
20. An application under order 39 Rule 2A involves stringent consequences. Thus, by now it is well settled that before the Court passes an order under Order 39 Rule 2A visiting the party with penal consequences the Court is required to arrive at an irrefutable and definite finding of willful and deliberate breach/violation of the order of injunction. From the facts and circumstances taken note of above, it is more than obvious that in the present case it cannot be said that the appellant has succeeded in proving with reference to any evidence

whatsoever alleged breach of the order of injunction, so as to invite any penal consequence as contained in Order 39 Rule 2A CPC.

21. We, therefore, find the conclusion of the Trial Court in this regard to be correct and requiring no interference with the order rejecting the application under Order 39 Rule 2A CPC.

22. The appeal and application, therefore, stand disposed of without calling for the trial court records or formal preparation of paper books.

(Madhuresh Prasad, J.)

(Supratim Bhattacharya, J.)