

22.03.2024
SL No.5
Court No.8
(gc)

**FMAT 83 of 2024
CAN 1 of 2024**

**Bhola Nath Dutta & Ors.
Vs.
Smt. Kalpana Dutta**

Mr. Srinjoy Das,
Mr. Puran Paul

...for the Appellants.

1. The appellants are the owners of the immoveable property in which the plaintiff/respondent claims to be a tenant.
2. The learned Counsel for the appellants submits that the plaintiff suppressed the document by which she had agreed to surrender tenancy in lieu of a flat on ownership basis and that she is not residing in the said premises since 2019, the interim order is required to be vacated on the ground of suppression of material fact.
3. The memorandum of agreement dated 2nd May, 2023 is disclosed in the stay petition.
4. A photocopy of the agreement annexed to the petition is compared with the original memorandum of agreement produced before us wherefrom it appears that the plaintiff has signed the said document in all the pages.

5. It appears from the plaint that this agreement has not been disclosed, however, the plaintiff has stated that she had paid rent till the month of March, 2024.
6. The learned Counsel for the appellants submits that by reason of the interim order, the appellants are unable to continue with the construction.
7. Although, it appears that the learned Trial Court has observed that the interest of the plaintiff is required to be protected for a limited period but from the reading of the order it appears that the ad-interim order is not limited till 5th April, 2024 when the said matter is made returnable. Reading the order as a whole, we are of the view that the interim order is limited till 5th April, 2024. It would be open for the appellants to apply for recalling and/or vacating and/or variation and/or modification of the ad-interim order in the meantime upon prior service to the plaintiff. In the event any application is filed by 1st April, 2024 upon prior service to the plaintiff, we would request the learned Trial Court to decide the objection first. We make it clear that in the event the

learned Trial Judge is of the view that the interim order is required to be extended notwithstanding the objection and the objection petition requires further hearing, an appropriate order may be passed by the learned Trial Judge upon recording reasons for doing so.

8. However, we would request the learned Trial Judge to dispose of the injunction application as expeditiously as possible and preferably within a period of 60 days from the date fixed with peremptory directions with regard to the filing of affidavits, if necessary.
9. We make it clear that we have not gone into the merits of the matter and our observations shall not influence the learned Trial Judge in deciding the objection or the injunction application on merits.
10. Since this order is not likely to affect the plaintiff, there is no need to serve any notice upon the plaintiff.
11. However, a copy of this order shall be communicated to the learned Advocate of the plaintiff in the meantime.
12. A copy of this order shall also be brought to the notice of the learned Judge,

XIIIth Bench, City Civil Court at Calcutta
from whom the proceeding is pending.

13. With the aforesaid observation, the
appeal and the application are disposed of.
14. However, there shall be no order as to
costs.
15. Urgent Photostat certified copy of this
order, if applied for, be given to the parties
on usual undertaking.

(Soumen Sen, J.)

(Uday Kumar, J.)