

15.05.2024
Sl No.8
Court No.8
(gc)

**FMAT 155 of 2024
CAN 1 of 2024**

**Sushanta Banerjee
Vs.
Mehul International Ltd.**

Mr. Siddhartha Banerjee,
Mr. Souradeep Banerjee,
Mr. S.K. Banerjee,
Ms. Sanjana Sinha

... for the Appellant.

1. The appeal is arising out of an order dated 23rd April, 2024 in connection with an application for injunction filed under Order XXXIX Rule 1 & 2 read with Section 151 of the Code of Civil Procedure.
2. The said application was filed in a suit instituted by the plaintiff claiming, *inter alia*, a decree for declaration that the plaintiff is a bona fide and lawful tenant in respect of the suit premises and a decree for perpetual injunction restraining the defendant and/or its men and/or agents and/or assigns from disturbing and/or interfering with the peaceful possession of the plaintiff at the suit premises.
3. Mr. Siddhartha Banerjee, learned Counsel appearing on behalf of the

plaintiff/appellant has submitted that the opposite party/respondent has accepted that the plaintiff/appellant is a tenant but had arbitrarily increased the rent and demanded such increased rent to which the appellant had objected. In view of refusal to pay such increased rent decided unilaterally and without taking recourse to the provisions of the W.B.P.T. Act, 1997. The respondent is trying to illegally dispossess the plaintiff from the suit property. Mr. Banerjee further submits that in spite of a clear averments made in the application to the aforesaid effect and disclosure of such documents, the learned Judge, VIth Bench, City Civil Court at Calcutta had refused to pass a protective order for a limited period.

4. We have read the petition and the documents disclosed before the learned Single Judge. It appears from the pleading as well as the documents disclosed that the plaintiff was a tenant in respect of Shop Room No.6 at the ground floor of Premises No.7/2, A.J.C. Bose Road, Police Station – Shakespeare Sarani, Kolkata-

700017. The defendant has issued letters demanding enhanced rent. It is the categorical case of the plaintiff that since the plaintiff is not agreeable to such enhancement, he had received threats of illegal dispossession. It is further stated that the plaintiff is facing severe difficulties in carrying out his business owing to the poor maintenance of the property. The respondent has failed to carry out essential repairs in order to make the suit property habitable. It is further alleged that in or about 10th April, 2024, an attempt was made to dispossess the plaintiff from the suit property. Prima facie, it appears that the plaintiff is a tenant under the respondent and the plaintiff cannot be evicted without due process of law. The lawful possession is established by the rent receipts and communications exchanged between the parties.

5. On such consideration, we pass an ad-interim order of injunction restraining the defendant/opposite party from interfering with the possession of the plaintiff for a period of eight weeks from date or till the

date fixed before the learned Trial Court, whichever is earlier.

6. We direct the plaintiff/appellant to communicate this order along with the plaint and the petition filed in T.S. No.640 of 2024 upon the respondent/opposite party by Speed Post with A.D. within one week from date. This order shall also be communicated to the learned Trial Court for information.
7. We make it clear that the respondent shall be at liberty to apply for vacation and/or variation and/or modification of this interim order before the learned Trial Court upon prior notice to the appellant.
8. In the event any such application is filed before the Trial Court before the next date fixed, the learned Trial Court shall consider the said application before deciding the prayer for extension of this interim order.
9. It is needless to mention that the Ld. Trial Court shall decide the matter uninfluenced by the observation made in this order as we have not heard the opposite party/respondent and we felt that on the

basis of the materials available before the learned Trial Court, a limited order could have been passed protecting the possession of the plaintiff in relation to the suit property.

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

(Soumen Sen, J.)

(Uday Kumar, J.)