

22-05-2024
Item no.6
Subrata
Bhattacharyya
AR(C)

IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
Appellate Side

FMAT(ARBAWARD) No.24 of 2024
Lions Orthopaedics Hospital and Research Centre
-VS-
B. Murarka Charitable Trust
with
CAN No.1 of 2024

Mr. Rajarshi Dutta
Mr. Balarko Sen
Ms. Shivansi Indoria ...for the appellant

Mr. Avirup Chatterjee
Mr. Rishov Das ...for the respondent

This appeal is entertained on the assurance given by the advocate-on-record for the appellant to cure the defects pointed out in the report of the department by 24th May 2024.

We formally admit the appeal.

After hearing learned counsel for the parties, we are in a position to dispose of the appeal itself, dispensing with all formalities.

We find that the appellant is aggrieved by a direction in the impugned judgement and order dated 22nd April 2024 passed by the learned court below allowing the respondent free ingress into and egress from the suit property and restraining the appellant from interfering with his possession.

The appellant claims to be in exclusive possession of the property. On the other hand, learned counsel for

the respondent-trustees asserts that the ownership of the property is with the respondent-trust with a right of equity and of inspection to them.

We find that the matter has already become returnable before the learned court below.

We, therefore, dispose of the appeal and the connected application – FMAT(ARBAWARD) No.24 of 2024 with CAN No.1 of 2024 – by directing that all issues shall be considered by the learned trial judge. All points are kept open before him.

In the meantime, we appoint Dr. Manabendra Bhowmick, Advocate, (mob. no.8617621609) and Smt. Shanti Lata Saha, Advocate, Bar Association Room No.2 (mob.no.8274855938) as Joint Special Officers who shall give notice to the parties of their appointment.

If the trustees of the respondent-trust are desirous of visiting the subject property, they shall first inform the first named Joint Special Officer. He shall thereupon inform the parties of the date and time of visit by a reasonable notice.

The respondent-trustees may thereupon, in the presence of the Joint Special Officers, make an entry into the said property and inspect the same. The visit should be absolutely peaceful and nobody shall not cause any annoyance to anybody or breach of peace. The duration should be short, not more than 45 minutes.

The parties undertake before this court that they shall remain peaceful during the visits made by the respondent-trustees.

The Joint Special Officers shall be paid initial

remuneration of 600 GMs each to be borne by the parties in equal share.

The report of the Joint Special Officers may be filed before the learned court below which shall be considered by the learned trial judge. Further remuneration to the Joint Special Officers may be granted by the said court.

This interim order shall only be valid till it is superseded by any subsequent order passed by the learned trial judge.

[I.P. Mukerji, J]

[Biswaroop Chowdhury, J]