

02.07.2024
Item No.115
M/L
gd/ssd

FMA/441/2023
IA NO: CAN/2/2023
ASHOK ROY
VS
STATE OF WEST BENGAL AND ORS.

Mr. Atanu Basu,
Ms. Ritu Parna Saha,
Mr. Subhajit Chowdhury
..for the Appellants.

1. This intra court appeal by the 8th respondent in WPA 26633 of 2022 is directed against an order dated 31st January, 2023.

2. In the said writ petition filed by the 8th respondent herein who is none other than the mother of the appellant.

3. The allegation was that the appellant who is the elder son of the 8th respondent herein was causing disturbance to the writ petitioner and the writ petition was disposed of by directing the appellant to apply for a government accommodation with the direction to the authority to consider the application and the appellant was permitted to stay in the ground floor of the building for a maximum period of three months.

4. The order was challenged by way of this appeal and an order of interim stay was granted on 27.04.2023 by passing the following order:

“1. We have heard Mr. Dipanjan Datta, learned advocate for the appellant. There is a delay of 30 days in filing the appeal. We have perused the affidavit filed in support of the application for condonation of delay in preferring the appeal and find sufficient cause has been shown by the appellant in not preferring the appeal within the period of limitation. Hence, the delay in filing the instant appeal is condoned. The application being I.A. No. CAN 1 of 2023 is allowed.

2. Though notice has been served an affidavit of service has been filed, none appears for the respondents. On going through the order passed in the writ petition, we find that essentially there is a dispute between the writ petitioner and the appellant, who is one of her sons and there is another son and daughter, who are stated to be residing along with the writ petitioner in the first floor of the building in question. The appellant is stated to be residing in the ground floor.

3. The order and direction issued in the writ petition directs the appellant to stay in the ground floor of the premises only for a period of three months, which is to expire shortly.

4. Prima facie, we are of the view that the grievance expressed by the writ petitioner is a civil dispute in which the Writ Court would seldom interfere. Therefore, there will be an order of interim stay of the order dated 31st January, 2023 till the disposal of this appeal.

5. List the appeal on 21st June, 2023.

6. Let fresh notice be served by the appellant on the respondent/writ petitioner. In the meantime, the undertaking given by the appellant before the learned Writ Court that he shall not disturb his mother shall continue.”

5. Though a notice was sent to the private respondent no.8, the same has returned with the postal endorsement “refused”.

6. As observed by us in the aforementioned interim order the dispute between the writ petitioner and the appellant herein, namely, the elder son and mother is clearly a civil dispute and whether the appellant has got a right in the property etc. cannot be subject matter of adjudication in a writ petition nor the issue can be decided or resolved by the police authorities.

7. Therefore, the order passed in the writ petition is set aside and the interim order which was passed on 27.04.2023 shall be the final order in this appeal and the appellant as well as the 8th respondent shall resolve their dispute regarding the property before the competent civil court and the undertaking given by the appellant before the writ court that he shall not disturb his mother, namely, the 8th respondent herein shall continue forever.

8. Accordingly, the appeal stands disposed of.

(T. S. SIVAGNANAM)
CHIEF JUSTICE

(HIRANMAY BHATTACHARYYA, J.)