

Court No. 16
(266282)

04.12.2024

(AD 28)

(S. Banerjee)

FMAT 282 of 2024

CAN 1 of 2024

Vinay Joldhari & Ors.

Vs.

Kedarnath Enterprise Pvt. Ltd. & Ors.

Mr. Rachit Lakhmani

Mr. Subham Gupta

Mr. Rajsekhar Bal Bakshi

...for the appellants

Mr. Pinaki Ranjan Mitra

Ms. Gargi Acharyya

...for the respondents

Since the present First Miscellaneous Appeal includes both questions of law and fact, the appeal is admitted and shall be heard on all the questions raised in the memorandum of appeal.

The appeal itself is taken up for hearing along with the connected application on consent of parties.

Upon a bare perusal of the impugned order, we find that the same has gone much beyond the scope of the injunction application in connection with which it was passed. In the plaint itself, the plaintiff/developer/respondent no. 1 has sought declaration and consequential permanent injunction restraining the defendants/appellants from disturbing the carriage of repairs/construction/demolition work at the suit

property in accordance with a sanctioned building plan issued by the KMC in favour of the plaintiff/respondent no. 1.

In an injunction application filed in connection with the suit, in respect of which the impugned order has been passed, the plaintiff sought an injunction restraining the defendants/appellants from preventing the plaintiff from making construction and development work in respect of the suit property barring the portion occupied by the defendants/appellants. However, by the impugned order, the learned Trial Judge has directed the plaintiff to begin construction work over the dilapidated building as per the report submitted by the learned Advocate Commissioners and in terms of the agreed terms and conditions vide development agreement dated March 13, 2019 over the suit premises.

It is required to be considered that the said development agreement was between the owners and the developer and the appellants/occupiers of the property were not parties thereto.

In fact, as a build-up to the present suit, a writ petition had been preferred by the present appellants in respect of the self-same property where an order was passed directing a hearing to be given to all

concerned, including the present appellants, before demolition/development of the property.

Moreover, in a previous challenge against an order of ad interim injunction passed in the present suit, a coordinate Bench had recorded that the Court shall decide the injunction application upon taking into consideration the interest of the appellants. The Division Bench had observed that in the event the appellants were found to be in possession of Schedule A, they cannot be dispossessed without due process of law, although in the same breath, the Division Bench has held that it was not clear as to whether they are in possession in respect of the Schedule A property.

However, the tenor of the said order was that the possession of the appellants, if any, in respect of the suit property is to be honoured before deciding the injunction application finally.

Apart from the fact that the trial court did not take such factor into consideration, it has also been observed by the learned Trial Court, by placing reliance on the observations of two Commissioners' reports, that the concerned building has been marked as a "dangerous building" by the Kolkata Municipal Corporation and the condition of the very old and dilapidated building has a potential of endangering

human life and limb and it is felt necessary by the Court that construction work should begin at the site by removing the old building which may injure people and even prove to be fatal to human life.

Such observations are entirely extraneous and beyond the purview of the suit itself.

The suit was filed on the strength of a development agreement executed purportedly by the owners in favour of the plaintiff/respondent no. 1/developer and has nothing to do with the orders passed by the Kolkata Municipal Corporation.

That apart, we are convinced that the relief granted by the impugned order, while deciding the interlocutory injunction application, was much beyond the scope of the injunction prayed for in the application and tantamounts to decreeing the suit itself prematurely.

In such view of the matter, FMAT 282 of 2024 is allowed on contest, thereby setting aside the impugned order, being Order No. 23 dated June 18, 2024 passed by the learned Judge, Twelfth Bench, City Civil Court at Calcutta in Title Suit No. 1721 of 2023. The injunction application is remanded to the learned Trial Judge. The learned Trial Judge shall now decide the injunction application upon giving a

fresh opportunity of hearing to the parties. In the event the learned Trial Judge feels necessary, the learned Trial Judge shall appoint an Engineer Commissioner, either of its own or on application of either of the parties, before deciding the injunction application to ascertain the technical feasibility of development work in the rest portion of the suit building by leaving aside the portion of the building occupied by the appellants and the safety concerns of the appellants in that regard should also be addressed by the learned Trial Judge before deciding the injunction application finally. It is made clear that it will be open to the learned Trial Judge to decide the injunction application on its own merits without being unnecessarily influenced on merits by any of the observations made above.

There shall be no order as to costs.

CAN 1 of 2024 is accordingly disposed of as well.

Urgent photostat certified copies, if applied for, be issued to the parties on compliance of requisite formalities.

(Sabyasachi Bhattacharyya, J.)

(Gaurang Kanth, J.)