

25<sup>th</sup> September, 2024  
(D/L No.251)  
Ct. No.4  
(SKB)

**FMAT 298 of 2024**  
**With**  
**IA NO: CAN 1 of 2024**

Abul Kashim and others  
Versus  
Sokhina Bibi

Mrs. Shila Sarkar,  
Mr. Sibasis Ghosh  
... for the defendants/appellants.

Mr. Mrinal Kanti Ghosh  
... for the plaintiff/respondent.

**Re: CAN 1 of 2024 (Stay application)**

1. The appellants are the defendants in the suit wherein the order of *status quo* has been passed on 21<sup>st</sup> May, 2024 directing the parties to maintain *status quo* with regard to the nature, character and possession of the suit property till disposal of the suit. It is this order which is in appeal in the present proceedings.
2. The brief factual background of the case is that the plaintiff claimed the suit property to be *ejmali* property and was claiming a share therein. He thus prayed for partition of the suit property. In the suit he filed an application alleging that the present appellant, who claimed to be purchasers of certain portion of the land were interfering with

the plaintiff's peaceful possession and were bent upon ousting her from the property.

3. The appellant, however, claimed right, title and interest in the property by virtue of deed of conveyance.

4. In the above factual background the order of *status quo* has been passed in favour of the plaintiff/respondent. The learned Counsel has assailed the order of *status quo* on two grounds:

- i. Firstly, that the same is bereft of any reasons in respect of the order. The order does not record existence of a *prima facie* case, balance of conveyance or inconvenience in favor of the plaintiff. It also does not record the likelihood of any irreparable injury that the plaintiff may suffer. The essential ingredients for exercise of jurisdiction in favour of the plaintiff under Order 39 Rules 1 and 2 has not been recorded by the Court before passing of such order.
- ii. The Court has not determined and specified the factual possession regarding the extent of actual possession of the plaintiff or

defendant. Without specifying the actual possession as obtaining at the suit property as regards possession of the parties an order of *status quo* has been passed and, therefore, the same is bad in law.

5. The learned Counsel for the respondent on the other hand, submits that prior to passing of the order of *status quo* the Court had passed an *ad interim* injunction. The defendant was afforded hearing and only thereafter the order of *status quo* has been passed, having due regard to the threatened ouster of the plaintiff. The learned counsel is however not in a position to indicate from the order under appeal that any reason has been assailed in respect of this order. In our opinion on this ground alone, the order is unsustainable. It is by now a settled legal proposition that assigning of reasons is essential in an order determining rights intra-parties. The assigning of reasons is a necessary concomitant of a valid order. Only if reasons are assigned in an order/judgment delivered in exercise of judicial power then it could be said that there had been proper and due application of mind to the issue before the Court. In this connection we consider it

beneficial to refer to decision of the Apex Court in the case of ***State of Himachal Pradesh vs. Paras Ram and others*** reported in ***(2008) 3 SCC 655***. The Apex Court in the said report has reiterated that requirement of indicating reasons has been judicially recognized as imperative and has taken note of earlier decisions and authority on this point to record that the right to reasons is an indispensable part of a sound judicial system, i.e., reasons at least sufficient to indicate an application of mind to the matter before the Court.

6. We find that while passing the order of *status quo* the Trial Court has not assigned any reason in support of the order under appeal.
7. Insofar as the second submission advanced on behalf of the appellant, we are inclined to accept the same for the reason that when the possession is in dispute, and a prayer is made by way of the parties for maintaining *status quo*, or before the Court proceeds to pass an order of *status quo*, the Court must record the possession of the party/plaintiff in the instant case, with clarity unless there is any special circumstance which insists the passing of an order of *status quo*, but then also such a special circumstance is required

to be recorded by the Court passing the *status quo* order.

8. In view of the above findings we find the order of *status quo* dated 21.05.2024 to be devoid of any reasons and unsustainable. The same is hereby set aside.
9. The application for temporary injunction is directed to be re-heard by the Trial Court and it goes without saying that the Trial Court shall dispose of the said application upon recording proper reasons.
10. Since we have not entered into the merit of the respective stands taken by the parties, none of the observations shall be construed to have any persuasive impact thereupon and the learned Judge is free to take a decision on the merit of the case bearing in mind the nuances of law applicable in relation to a temporary injunction.
11. The parties are in agreement that the pleadings are already filed in the case before the trial court. The application is thus required to be considered.
12. We, therefore, consider it appropriate that the final order be passed by the trial court on the application under Order 39 Rules 1 and 2 after

hearing the parties within two weeks after reopening the court post Puja Holidays.

13. Accordingly, CAN 1 of 2024 is disposed of.

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14. In view of the nature of the order passed in the application, nothing survives in the appeal. Thus, without calling for the trial court records and without preparation of formal paper book, the appeal is also disposed of.

**(Madhuresh Prasad, J.)**

**(Supratim Bhattacharya, J.)**