

02.04.2024  
Court No. 3  
S/L. No. 13  
Sourav/  
Suvayan

**FMAT 528 of 2023  
With  
CAN 1 of 2023**

**Smt. Chandana Saha & Anr.  
Vs.  
Sri Ashok Kumar Roy & Ors.**

*Mr. Biswaroop Bhattacharya  
Mr. Varun Kothari  
Ms. Sreetama Biswas  
Ms. Shreyasee Basu*

*... for the appellants.*

*Mr. Alok Kumar Ghosh  
Mr. Barnamoy Basak*

*... for the respondent nos. 1 to 3.*

*Mr. Biswajit Mukherjee  
Mr. Subhrangsu Panda*

*... for K.M.C.*

1. Heard learned Counsel for the parties.
2. Though the matter is at the application stage, we take up the matter for final disposal with consent by the learned Counsel for the parties.
3. This appeal has been filed by the defendant against the order passed by the learned court below granting injunction in favour of the plaintiff as prayed for restraining defendants from interfering with the modification work taken up by the plaintiff within the limit of the suit premises owned by him (plaintiff).
4. The dispute in the suit relates to construction of toilet/toilets by the plaintiff in the suit premises. It is submitted at the Bar that though the

plaintiff is making modification/renovation within the ambit of the area owned by him in a commercial premise, he is constructing the toilet without any plan approved by the Kolkata Municipal Corporation and such action of the plaintiff is violative of Section 3(2)(a) of the Kolkata Municipal Corporation (Building) Rules, 2009.

5. Having heard the learned Counsel for the parties, we perused the entire orders passed by the learned court below and it is found that learned court below has taken into consideration the entire facts in a broader compass and thus restrained the defendants from interfering with the renovation/modification work of the plaintiff undertaken within the premises owned by him i.e., the suit premises.
6. It is further clear from the submission advanced by the learned Counsels for the parties that so far as right of ownership of the plaintiff over the suit premises is concerned, there is no dispute about that. The dispute is relating to the construction/renovation/modification of toilet etc., undertaken by the plaintiff to the detriment of the defendants as stressed in the submission. When the suit is pending adjudication and the plaintiff is undertaking or undertaken renovation etc., within his own premises, the

defendants should not be given right to interfere in the right of ownership of the plaintiff. So far as contravention of Section 3(2)(a) of the aforesaid Rules is concerned, the defendants/appellants are at liberty to raise that issue in the suit. If so advised, learned trial court may take assistance of the authority of the Kolkata Municipal Corporation in arriving at a just conclusion to settle the aforesaid question.

7. We have found no infirmity in the impugned order and the impugned order having taken care of the ingredients of the injunction, we do not find any justification to interfere in the matter.
8. Accordingly, the appeal being **FMAT 528 of 2023** along with the interim application being **CAN 1 of 2023** is devoid of any merit and dismissed.

**(Chitta Ranjan Dash, J.)**

**(Partha Sarathi Sen, J.)**