

23rd December,
2024
(AK)
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F.M.A.T 445 of 2024
IA No: CAN 1 of 2024
CAN 2 of 2024

Dilip Kumar Jalan
Vs.
Vishal Samuel Tupper and another

Mr. Rachit Lakhmani
Mr. Shubham Gupta
Mr. Piyush Kumar
Mr. Rajsekhar Bal Bakshi
...for the appellant/plaintiff.

Mr. Subhajit Das
...for the respondents.

In Re: CAN 2 of 2024

1. Upon hearing learned counsel for the parties, we are satisfied that sufficient cause for the delay in preferring the appeal has been made out in the application.
2. Accordingly, CAN 2 of 2024 is allowed on contest, thereby condoning the delay in preferring the appeal.

In Re: CAN 1 of 2024

3. CAN 1 of 2024 is now taken up for hearing.
4. The present appeal has been preferred against an order whereby *ad interim* injunction has been refused to the appellant/plaintiff.

5. The case of the appellant/plaintiff, in a nutshell, is that there was a Memorandum of Understanding (MOU) between the appellant/plaintiff and the respondent no.2/tenant in respect of the suit premises, of whom the respondent no.1 is a constituted attorney.
6. It is submitted by the appellant that in terms of the MOU, Flat no.15 in the suit building was handed over to the appellant, whereas in terms of the agreement, the adjacent flat no.16 was also to be handed over later on.
7. Learned counsel for the appellant submits that although flat no.15 has been in possession of the appellant, flat no.16 has not yet been handed over by the respondents.
8. It is submitted that the appellant prayed for an injunction before the court restraining the respondents from disturbing the appellant's ingress and egress to flat no.15.
9. Learned counsel for the respondents submits that the respondents have not created any hindrance to the ingress and egress of the appellant to the suit premises.
10. It is further submitted by the respondents that the possession of flat no.16 as well as flat no.15 has

already been handed over to the appellant, which is, however, disputed by the appellant.

11. In view of the above, the short conspectus of the appeal boils down to the ingress and egress to the flat of which the appellant is at present in possession.
12. In view of such questions of law and fact being involved, the appeal will be heard on the grounds as taken in the memorandum of appeal.
13. After the appeal is admitted, on consent of the parties, the appeal itself is taken up for hearing.
14. In view of the short conspectus of the appeal being the ingress and egress to the flats at present in possession of the appellant, as indicated above, and since the respondents are not disputing such ingress and egress rights, we put a question to the learned Advocate for the respondents as to whether we should dispose of the injunction application itself pending in the court below, although the present appeal arises out of the *ad interim* refusal of injunction, in order to expedite the suit itself.
15. To such question, learned counsel for the respondents submits, on instruction, that the appeal may be disposed of along with the injunction application pending in the court below and

necessary directions be passed for the suit to be expedited.

16. In such view of the matter, calling for the records and other formalities are dispensed with and the appeal is being disposed of finally.
17. In the light of the above observations, FMAT 445 of 2024 along with CAN 1 of 2024 are disposed of by restraining the respondents from disturbing the ingress and egress of the appellant to the suit property in any manner till disposal of the suit, bearing Title Suit No.1669 of 2024, pending before the learned Judge, Sixth Bench, City Civil Court at Calcutta.
18. The learned Trial Judge is requested to expedite the hearing of the suit.
19. It is expected that the suit itself shall be disposed of by the end of December 31, 2025.
20. There will be no order as to costs.
21. Urgent photostat copies of this order, if applied for, be given to the parties upon compliance of all requisite formalities.

(Sabyasachi Bhattacharyya, J.)

(Uday Kumar, J.)