

11. 19.08.2025
Court No.16.

(Pritam)

**FMAT 33 of 2025
with
CAN 1 of 2025
with
CAN 2 of 2025.**

**Binod Kumar Jaiswal & Ors.
-Vs.-
Kabita Shaw & Ors.**

Mr. Sanjoy Bose,
Mr. P.B. Mollick.

.....for the appellants.

Mr. Sounak Bhattacharya,
Mr. Anirban Saha Roy.

....for the respondents.

1. We have heard learned counsels for the parties.
2. The appellants are the sons of one Bidya Devi Jaiswal.
Admittedly, she was the monthly tenant in respect of the suit premises as described in Schedule-B property in the plaint. The plaintiffs have purchased the said property when Bidya Devi Jaiswal was admittedly a monthly tenant. It was alleged by the plaintiff that Bidya Devi Jaiswal delivered vacant possession of the Schedule-B property to the plaintiffs surrendering her tenancy with effect from the month of November 2021 for which the plaintiffs relinquished the rent for a period from January 2019 to October 2021.
3. The cause of action for filing the suit by the plaintiffs appears to be that while they were in possession on December 19, 2024 at about 03:00 p.m., the defendants

(the present claimants) accompanied by some goons or persons claimed themselves to be the sons of the said Bidya Devi Jaiswal to hand over the possession of the Schedule-B premises but they were resisted from entering and dispossessing the plaintiffs from the suit property on the basis of the aforesaid narratives, the plaintiff filed the suit in which the order of *status quo* was passed in respect of the Schedule-B property on December 23, 2024 till January 7, 2025. The appeal was filed on January 21, 2025.

4. Admittedly, after the expiry of the final ex parte order of injunction, this matter was taken up by the learned trial court on January 7, 2025. The defendants, however, instead of service did not appear reason there being they were contemplating to file an appeal, which was ultimately filed on January 21, 2025. A co-ordinate bench, while admitting the appeal has made the following observation;

“10. However, it is made clear that the impugned status quo order shall not in any way prevent the defendants/appellants from taking recourse to any legal remedy available to them under the civil or criminal law in any manner whatsoever.

11. In view of the short conspectus of the appeal, we are of the opinion that the trial court records need not be called for, nor are paper books required to be prepared, for hearing of the appeal. The appeal shall be heard along with the present stay application on the materials already on record. The appellants shall serve copies of the stay application along with the Memorandum of Appeal on the respondents indicating that the

appeal shall be listed for hearing on February 27, 2025 along with the application. An affidavit of service to that effect shall be filed on the returnable date.”

5. It is elementary that surrendering of tenancy if relied upon has to be by registered instrument. Admittedly, there is no registered instrument showing delivery of possession by the mother of the appellants to the plaintiff. Apart from many unusual features, noticed by the co-ordinate bench with regard to legality and genuineness of the counter-part of the receipts themselves another factor which makes the surrender inadmissible.
6. The learned trial court, while considering the matter, has proceeded on the basis of the averments made in the plaint and the injunction petition and on the basis of the narratives there, it was possible for the learned trial court to pass an interim protection which is capable of being valid when this matter is heard in presence of the respondents.
7. In our view, the appellants ought to have appeared on January 7, 2025 and brought it to the notice of the learned trial court of all the material facts by disclosing all documents which is disclosed in the said petition instead of preferring the appeal against the ex-parte ad interim order but having regard to the subsequent events, there is a sufficient ground to make out a case by recalling of the said order and to take a decision afresh on the said order.

8. Under such circumstances, we direct the learned trial court to hear the injunction application on merits preferably within a period of six weeks from the date of communication of this order.
9. The appellant shall file affidavit-in-opposition to the injunction application within seven days from date. Reply thereto, if any, be filed three weeks thereafter and the matter may be mentioned before the learned trial court for fixing the suitable date for hearing of the application for injunction on merits.
10. The learned trial court shall take into consideration the observations made in this order as we find it relevant for the purpose of deciding the injunction application but shall not be swayed or influenced by the said observations while deciding the matter afresh.
11. For the time being, we appoint Sri. Debarshree Das, Advocate, 2nd Floor, Bar Library Club as Special Officer in respect of the Schedule-B property who shall make an inventory and put a padlock and it shall be in the custody of the Special Officer till the injunction application is decided on merits. The Special Officer shall receive a consolidated remuneration of Rs.40,000/- to be shared by the parties in equal proportion.
12. The appointment of the Special Officer shall abide by the result of the injunction application. The Special Officer shall file a report before the learned trial judge

within one week from date of communication of this order.

13. This order shall be duly communicated to the Special Officer for information and doing the needful. The parties shall render all possible assistance and also make suitable arrangements for the Special Officer to comply with this direction.
14. The Appeal being FMAT 33 of 2025 and the connected applications are thus disposed of. However, there shall be no order as to costs.

(Soumen Sen, J.)

(Apurba Sinha Ray, J.)