

AD- 10
Ct No.16
25.02.2025
(SSS)

FMA 473 of 2023
With
CAN 1 of 2023

Rattanbai Noor Bhoy Sons and Ors.
Vs.
Md. Mahmood Alam and Ors.

Mr. Debayan Sinha
...For the Appellants.

Mr. K. C. Garg,
Ms. Sumita Agarwal,
Mr. A. Ahmed
...For the Respondents.

1. On consent of the parties, the appeal and the application are taken up for hearing together, in view of the short scope of the dispute. The respondent Nos. 1 and 2 have filed a suit for eviction of the appellants under Section 6 of the Specific Relief Act, in connection with which the impugned order was passed, granting injunction restraining the defendants/appellants not only from creating any third party interest over the suit property and from changing the nature and character of the suit property but also from commencing any business on the suit property.

2. Upon hearing learned Counsel for the parties, we are of the opinion that in the event the plaintiffs/respondents succeed in the suit, they will get back the possession of the property along with whatever stands on the property and as such, the current running of business by the appellants cannot hamper the interest of the plaintiffs/respondents at all. Rather, the balance of convenience and inconvenience would enure to the benefit of the appellants inasmuch as their mode of earning livelihood by commencing and carrying on business on the property till they are in possession cannot be restrained or curtailed by an order of injunction. The inconvenience suffered by the plaintiffs, if such restraint order is not passed, would be surpassed by the inconvenience suffered by the defendants/appellants if their business is stopped.

3. However, regarding the rest of the injunction in respect of parting with possession, creating third party interest and/or changing the nature and character of the suit property, we are absolutely *ad idem* with the findings of the learned Trial Judge and do not intend to interfere with the said part of the impugned order.

4. Accordingly, FMA 473 of 2023 is allowed in part, thereby modifying the impugned order bearing Order No. 5 dated April, 20, 2023 passed by the

learned Judge, Twelfth Bench, City Civil Court at Calcutta in Title Suit No. 1007 of 2022 to the effect that there would be no embargo on the defendants/appellants from commencing or carrying on any business over the suit property till disposal of the suit. However, we are not touching the other part of the impugned order whereby the defendants/appellants have been restrained by an order of injunction from creating any third party interest over the suit property or to change the nature and character of the suit property till disposal of the suit.

5. Consequentially, CAN 1 of 2023 also stands disposed of.

6. No order as to costs.

7. In view of the urgent nature of the suit from which the present appeal arises and keeping in view that the suit is already on the peremptory board, it is expected that the learned Trial Judge shall dispose of the suit itself as expeditiously as possible, positively by June 30, 2025.

(Sabyasachi Bhattacharyya, J.)

(Uday Kumar, J.)