

D/L.41.
May 13, 2025.
MNS.

FMAT No. 176 of 2024
+
CAN 1 of 2024
+
CAN 2 of 2024

Sri Sailesh Gupta
Vs.
Getmax Globe Private Limited and others

Mr. Aniruddha Chatterjee,
Mr. Surya Prasad Chattopadhyay,
Mr. K. N. Jana

... for the appellant.

Mr. Sailesh Mishra

...for the respondent no. 3.

Mr. Rohit Banerjee

...for the respondent no. 4.

Re : CAN 1 of 2024 (condonation of delay)

1. In view of sufficient reason for the delay in preferring the appeal being shown in the application, CAN 1 of 2024 is allowed, thereby condoning the delay in preferring FMAT No. 176 of 2024.

2. There will be no order as to costs.

Re: FMAT No. 176 of 2024

3. The First Miscellaneous Appeal is now taken up for admission hearing.

4. In view of several arguable questions, both on facts and law, having been made out, we admit the appeal for being heard on the grounds taken in the Memorandum of Appeal.

Re: CAN 2 of 2024 (injunction application)

5. The supplementary affidavit filed today be kept on record.

6. During hearing of the application, it transpires that the scope of the appeal is very limited.

7. As such, on consent of the parties, we take up the appeal itself for hearing along with the application.

8. The present appeal arises out of the refusal of a prayer for ad interim injunction.

9. The crux of the matter is that the plaintiff/appellant has filed a suit for declaration of his tenancy right, recovery of possession on the allegation that he has been unlawfully ousted from the suit premises, and for permanent injunction restraining the respondents from alienating and/or encumbering the suit property in favour of any third party and/or creating any third party interest in any manner as well as for damages and other ancillary reliefs.

10. Learned senior counsel appearing for the appellant contends that the learned Trial Judge refused to grant ad interim injunction primarily on the basis that the plaintiff has failed to prove his title in the suit property, whereas it is not ownership/title but tenancy rights which has been claimed by the plaintiff in the suit.

11. Learned counsel appearing for the defendant / respondent no. 3 contends that the respondent no. 3 has already issued an eviction notice and is taking steps for eviction of the plaintiff from the suit premises.

12. Learned counsel appearing for the defendant / respondent no. 4 submits that from the annexures of the plaint itself, it will be evident that the plaintiff is a tenant under the respondent no. 3 and a notice of eviction under Section 6 of the West Bengal Premises Tenancy Act, 1997 Act has been issued by the defendant no. 3 against the appellant.

13. Learned counsel for the respondent no. 4 further expresses apprehension that since the schedule of the plaint is vague as regards the description of the suit property, other tenants who have been inducted in an adjoining plot of the respondent no. 4 as well as the respondent no. 4 might be affected if an injunction is granted.

14. Upon hearing learned counsel for the parties and perusing the schedule of the plaint, we find that the exact area and measurement, as well as the boundaries of the suit property, have been enumerated therein.

15. In any event, in view of the nature of the injunction sought at the ad interim stage, we are of the opinion that already accrued and vested rights of any of the respondents cannot be affected.

16. However, we find from a perusal of the impugned order that the very premise on which the ad interim prayer of injunction was refused was not tenable in the facts of the case, since the plinth of the plaint case is not title or ownership but tenancy rights of the appellant.

17. In fact, *prima facie* proof of such tenancy right is evident from the annexures to the plaint, which are comprised of several rent receipts as well as an eviction notice issued by the respondent no. 3, which presupposes that the tenancy of the plaintiff/appellant is admitted.

18. In the event third party interest is created in respect of the suit property during the period when the plaintiff is out of possession, unlawfully or otherwise, the outcome of the suit will definitely be prejudiced and as such, a case of irreparable injury has been made out by the appellant even apart from the *prima facie* case as discussed above.

19. At this juncture of the hearing, learned counsel for the parties express their agreement to the disposal of the present appeal being deemed as a disposal of the temporary injunction under Order XXXIX Rules 1 and 2 of the Code of Civil Procedure pending in the court below in order to expedite the hearing of the suit itself.

20. As such, FMAT No. 176 of 2024 is allowed on contest, thereby setting aside the impugned order, being the later portion of the order dated January 16, 2024 passed by the learned Civil Judge (Senior Division), Sealdah, District- South 24 Parganas, and granting temporary injunction restraining the defendants/respondents from transferring, alienating, encumbering and/or creating any third party interest in

respect of the suit property in any manner whatsoever till disposal of the suit, bearing Title Suit No. 08 of 2024.

21. It is, accordingly, deemed that the temporary injunction application, which was pending in the court below, itself stands disposed of on consent of the parties.

22. Consequentially, CAN 2 of 2024 stands disposed of as well.

23. It is made clear that the observations made above are tentative, arrived at for the purpose of adjudicating of the temporary injunction application, and shall not binding in any manner on the learned trial Judge at any further stage of adjudication of the suit.

24. It is expected that the learned trial Judge shall endeavour to dispose of the suit itself as expeditiously as the business of the said court permits.

25. There will be no order as to costs.

(Uday Kumar, J.)

(Sabyasachi Bhattacharyya, J.)