

D/L44
13.05.2025
Rohit
ct.no.16

FMAT 303 of 2024

With

CAN 1/2024, CAN 2/2024, CAN 3/2025 and

CAN 4/ 2025

**Subir Pradhan
Versus
Subrata Chanda &Ors.**

Mr. Ayan Kumar Boral

...for the Appellant

Mr. Debasish Roy, Sr. Adv

Mr. Prangopal Das

...for the Respondent
Nos. 1 and 2

In Re: CAN 3 of 2025

1. CAN 3 of 2025 is otherwise in form.
2. The same has been filed for recording the death of the proforma respondent no.2 since the mother of the said deceased, namely Smt. Rina Pradhan, the proforma respondent no. 1, is already on record.
3. Accordingly, CAN 3 of 2025 is allowed, thereby expunging the name of proforma respondent no. 2 from the records.

4. Necessary consequential corrections to the cause title of the pending applications and the Memorandum of Appeal shall be carried out by learned Advocate-on-record for the appellant by tomorrow, that is, May 14, 2025.

In Re: CAN 1 of 2024

1. In view of the delay being only of about twelve days and in view of plausible explanation for the delay having been shown, CAN 1 of 2024 is allowed, thereby condoning the delay in preferring FMAT 303 of 2024.
2. There will be no order as to costs.

In Re: FMAT 303 of 2024

1. The appeal is taken up for admission hearing. The plaintiff in a suit for permanent injunction has preferred the instant appeal against an order whereby the application of the plaintiff under Order 39 Rule 1 and 2 of the Code of Civil Procedure was disposed of along with an application filed by the defendant nos. 1 and 2/ respondent nos. 1 and 2 under Order 39 Rule 4 of the Code of Civil Procedure.
2. The learned Trial Judge, while discussing the relevant arguments of the parties and the materials on record, came to a specific observation that the original trust property underwent a partition by a

registered deed, by dint of which the vendors of the defendant/respondent nos. 1 and 2 became the owners of the 'B' schedule property as described in the suit whereas the appellant has claimed title over the 'A' schedule property.

3. While being such owner, the vendors of the respondent nos. 1 and 2 were also in possession of their demarcated portion i.e., Schedule 'B' property and accordingly transferred the property in favour of the respondent nos. 1 and 2.
4. Although a challenge was preferred against the sale deeds executed in favour of the respondent nos. 1 and 2, the suit challenging the same failed, against which a first appeal is pending before this Court.
5. The appellant also sought to argue Section 44 of the Transfer of Property Act before the learned Trial Judge. However, the concept, it was observed, was foreign to the case made out by the parties.
6. In addition, we are of the opinion that the principle underlying Section 44 is not squarely applicable in the present case since the properties were already partitioned by registered deed of partition and did not comprise of a joint property.
7. In fact, we appreciate the manner in which the impugned order was passed, protecting the interest of both sides.

8. By the impugned order, the defendant/respondent nos. 1 and 2 were granted the liberty to undertake necessary repairs/renovation work in the 'B' schedule property without affecting the 'A' schedule property in any manner and it was directed that such repair/renovation work is to be carried out under the supervision of an empanelled Structural engineer of the Kolkata Municipal Corporation (KMC) strictly in accordance with the sanctioned plan of KMC as well as strictly in accordance with the suggestions provided by the Engineer Commissioner in his report dated August 5, 2023 and particularly according to the suggestions made in his supplementary report dated January 28, 2024, as well as the plaintiff/ appellant being allowed free access to the 'B' schedule property for inspection as and when required, but without claiming any equity or benefit whatsoever in future for such repair/ renovation work.
9. In view of the comprehensive language in which the impugned order is couched and since the learned trial Judge adverted to all possible components of the matter, we do not find any reason or scope of interfering with the impugned order.

10. Accordingly, FMAT 303 of 2024 is dismissed under Order XLI Rule 11 of the Code of Civil Procedure.
11. CAN 2 of 2024 and CAN 4 of 2025 stand disposed of consequentially as well.
12. No order as to costs.

(Sabyasachi Bhattacharyya, J.)

(Uday Kumar, J.)