

Title Suit no. 886 Of 2021Order No. 11/ Date:15.06.2022

Heard Ld. Counsels for both the parties on the injunction application and have also perused the documents annexed by the parties in the injunction application as well as in the written objection filed by the defendant on the injunction petition.

Having perused the documents relied upon by the plaintiff as well as the defendant I am of the opinion that the defendant evidently gave consent to the plaintiff for building re-building of the suit premises with the condition to reinstate the defendant in the tenancy to the extent of accommodation that is 138 sq.ft. in the new building. Accordingly, defendant took out a sanctioned plan no. 2016020012 dated 29.09.2016. It is the allegation of the plaintiff that the defendant deviated from the sanctioned plan and was allegedly making illegal construction to which he had objected and accordingly the K.M.C Authority issued notice to stop work. Plaintiff therefore by moving the instant application for injunction have prayed for temporary injunction restraining the defendants including their men, agents and associates from disturbing the peaceful, use and enjoyment of the plaintiff to the extent of 138 sq.ft at the suit premises i.e. existing portion of plaintiff in any manner whatsoever as has been described in the schedule of the injunction petition.

Before recording the objection of the defendant as regard the prayer of the plaintiff made in the injunction petition, this court failed to understand under which provision of law plaintiff has raised such objection when the K.M.C Authorities are there to see that the defendants do not raise any construction deviating from the plan. The plaintiff could be aggrieved only if the defendant failed to comply with the terms of the agreement entered into with the plaintiff. Bereft such act being complained by the plaintiff against the defendant this court do not find that the plaintiff has any imminent need of any court order to protect his any right that has been infringed by the defendant in any manner whatsoever.

Coming to the objection as raised by the Ld. Counsel for the defendant, this court has been apprised that there were indeed certain internal deviations while raising the construction by the defendant in the suit premises which has

been already approved and sanctioned by the concerned authorities upon payment of fine by the defendants. Moreover, whether or not the defendants are constructing in accordance with the sanctioned plan it is the duty of the Municipal Authorities to keep track of such facts for which the plaintiff has not been cast with any duty to run to the court and stall the construction of the defendant raising frivolous objection and in effect the period with which the construction that was to be completed in the suit premises as per the sanctioned plan is about to expire and the defendant has to bear huge costs for getting the plan extended to complete the construction undertaken by the defendant.

I find merit in the submission of the Ld. Counsel for the defendant and am of the opinion that no act of the defendant has prejudiced any right of the plaintiff that requires to be protected by dint of a temporary injunction order.

Hence, it is,

Ordered

That the temporary injunction as sought for by the plaintiff is refused and the injunction petition is dismissed on contest.

Dictated & corrected by me:

Judge, Bench-II

Judge, Bench-II
City Civil Court, Calcutta