

D/L.44.
May 6, 2025.
MNS.

FMAT No. 165 of 2025
+
CAN 1 of 2025

Kausik Bhaduri
Vs.
Smt. Madhuchhanda Bosu and another

Mr. Ashis Chandra Bagchi,
Mr. Shankha Maity,
Ms. ShinjitaRay,
Mr. Aditya Sinha

... for the appellant.

1. The present appeal has been preferred by the plaintiff in a suit for specific performance of contract, against the refusal of ad interim injunction.
2. The plaintiff/appellant's case in the suit is that a pre-mortgage agreement for sale was entered into between the plaintiff and the borrower, whereby the borrower, that is, the defendant no. 1, agreed to sell the property in favour of the plaintiff.
3. Relying on Clause - (c) of the agreement, it is argued on behalf of the appellant that the possession and enjoyment of the property was handed over to the plaintiff, as reflected in the agreement-in-question, prior to the property being given in mortgage to the respondent no. 2-bank. As such, it is argued that the principle applicable to pre-mortgage tenants is also attracted to the plaintiff/appellant, as prior rights on the basis of an agreement was created in favour of the plaintiff before

the mortgage was given by the defendant no.1 to the bank.

4. Since a *prima facie* case has been made out, the appeal is admitted and shall be heard on the above questions and the other grounds taken in the Memorandum of appeal.

Re: CAN 1 of 2025 (injunction)

5. The appellant shall serve copies of CAN 1 of 2025 on the respondents, indicating that the application shall be listed for hearing on May 20, 2025, when an affidavit-of-service to that effect shall be filed by the appellant.

6. The respondents shall remain restrained by an order of injunction from disturbing the peaceful possession of the appellant in respect of the suit property and/or from creating any third party interest in respect of the suit property till June 30, 2025 or until further orders, whichever is earlier.

(Uday Kumar, J.)

(Sabyasachi Bhattacharyya, J.)