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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **FAO(OS) (COMM) 96/2016**

ASHIMA INFRASTRUCTURES PRIVATE LIMITED

..... Appellant

Represented by: Mr.Rakesh Tiku, Senior
Advocate instructed by
Mr.B.L.Wali and Mr.Sandeep
Sharma, Advocates.

versus

NORTH DELHI MUNICIPAL CORPORATION & ANR

..... Respondents

Represented by: Ms.Mini Pushkarna, Standing
Counsel, Ms.Vasundhara
Nayyar, Ms.Arushiti,
Ms.Namrata Makin, Advocates
for North DMC with
Mr.Ashwani Kumar Mathur,
Junior Law Officer
(Advertisement Department) in
person.

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MR. JUSTICE YOGESH KHANNA

ORDER

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16.12.2016

1. A peculiar situation has arisen. Declining to grant ex-parte ad-interim injunction, the order passed by the learned Single Judge being challenged in the instant appeal. The concerned Bench before which the appeal was listed

issued notice and granted an ad-interim order in favour of the appellant. This happened on October 24, 2016. The Bench recused on November 23, 2016 directing the appeal to be listed before another Bench today. That is why instant appeal has been listed before this Bench today.

2. The peculiar situation is that the previous Bench has permitted the pleadings to be completed, over looking the fact that the concern in the instant appeal would be limited to see whether on the pleadings in the suit and the documents filed therewith did appellant make out a prima facie case warranted grant of an ad-interim injunction.

3. Needless to state after pleadings are completed in the suit and the injunction application filed by the appellant, the learned Single Judge would have to decide the issue whether pending disposal of the suit injunction must ensue. It is trite that there is difference in evaluation of the pleadings at this stage when a suit is first listed before the Court. At that stage, limited exercise is done by the Court to find out that whether case is made out for grant of an ex-parte ad-interim injunction. At the second stage, when the defendant is served and pleadings are complete, the scope of the debate becomes wider.

4. Since, ex-parte ad-interim injunction granted by the Division Bench on October 24, 2016 is continued till date and in the meanwhile, written statement has been filed, lest the parties are prejudiced before the learned Single Judge on account of any observation by this Court on the issue whether case is made out for grant of interim injunction pending disposal of the suit, with the consent of learned counsel for parties and for which we note, as regards the respondent, the counsel has taken instructions from

Sh.Ashwani Kumar Mathur, Junior Law Officer – Advertisement Department of the North Delhi Municipal Corporation, we dispose of the appeal directing the appellant to file replication to the written statement filed by the respondent within four weeks from today. The ex-parte ad-interim injunction granted by the Division Bench shall be transposed in the suit and shall enure till the learned Single Judge decide IA No.12760/2016 filed by the appellant invoking order XXXIX Rule 1 & 2 of the Code of Civil Procedure.

5. On being informed that the suit and the applications are listed before the learned Joint Registrar on March 29, 2017, with the consent of parties we pre-pone hearing of IA No.12760/2016, directing that it shall be listed before learned Single Judge for consideration on February 02, 2017.

6. Needless to state we have not expressed any opinion on the merits of the controversy.

7. No cost.

CM No.39461/2016

Dismissed as infructuous.

PRADEEP NANDRAJOG, J

YOGESH KHANNA, J

DECEMBER 16, 2016

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