

09.12.2020.
Item No. 179

**F.M.A.T. 1308 of 2019
with
C.A.N. 1 of 2019
(Old No. CAN 12303 of 2009)**

**Bengal Homeopathic Medical College and Hospital
Vs.
Sri Biplab Kr. Biswas and others.**

**Mr. Arijit Bardhan,
Mr. Vivekananda Bose,
Ms. Deblina Chattaraj.**

... for the appellant.

The appeal is admitted.

Re: CAN 1 of 2019 (Old No. 12303 of 2019)

The appellant is directed to serve the copy of the instant application upon the respondents by speed post as well as through courier service indicating that the instant application shall be listed immediately upon reopening of this Court following Christmas Vacation and shall file affidavit of service on the returnable date.

It appears that the interim order, which was passed by the Court ex parte, is vacated on the ground of suppression of material facts. The trust was created in the year 1971 and, according to the plaintiff/appellant, the then trustees executed a deed of gift in the year 1981 divesting the 'A' schedule property in favour of the plaintiff/appellant and, therefore, the factum of dissolution of the trust in the year 2008 appears to be inconsequential.

A distinction is to be drawn between suppression of facts and suppression of material facts. We feel

that it is a fit case where the plaintiff/appellant is entitled to an interim protection.

Accordingly, the respondents are restrained from making any construction over the 'A' schedule property till three weeks after reopening of this Court following Christmas Vacation or until further order or orders of this Court, whichever is earlier.

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(Harish Tandon, J.)

(Kausik Chanda, J.)