

28.09.2020
SL No.48
Court No.16
(gc)

FMAT 373 of 2020
With
CAN 1 of 2020
With
CAN 2 of 2020

Pradip and Kumkum Ghosh Family Foundation & Ors.
Vs.
Ramkrishna Vivekananda Mission & Ors.

(Via Video Conference)

Mr. Abhrajit Mitra, Sr. Adv.,
Mr. Aniruddha Chatterjee,
Mr. Chayan Gupta,
Mr. Dwip Raj Basu
Mr. Dhanakrishna Adhikari,
...for the Appellants.

Mr. Debashis Kundu, Sr. Adv.,
Mr. Lokenath Chatterjee,
Mr. Jaydeb Ghorai,
Mr. Saugata Banerjee,
Ms. Ayushi Kundu,
...for the Respondents.

The petitioners undertake to affirm and stamp the petition/application as per Rules within one month of resumption of normal functioning of the Court. Subject to such undertaking, the application is taken up for hearing through video conference.

Accordingly, the application being CAN 1 of 2020 is disposed of.

Re: FMAT 373 of 2020
with
CAN 2 of 2020

By consent of the parties the appeal and the application are taken up for hearing and disposed of by this common order.

The applicants are aggrieved by an order passed by the learned Civil Judge (Senior Division), 1st Court at Barasat in refusing to pass ad interim order ex parte. The said application was filed in a pending suit for specific performance. The appellants filed a suit for specific performance in the year 2014 for enforcement of a MOU purported to have entered into between the appellants and the respondents against an order of refusing by the learned Trial Judge to grant an order of injunction on 23rd December, 2014 an appeal was preferred by the appellants being FMAT 1110 of 2014 on 11th February, 2015 in which after recording the statements of the parties, the following orders were passed:-

1. The statement of Mr. Kundu that the Respondents/Defendants will not create any third party rights in respect of the property in dispute, is accepted and will continue till the suit is finally disposed of or is required to be modified with the leave of the Trial Court.
2. During the pendency of the suit the Respondents/Defendants will be at liberty to build a university on the disputed property without having a joint venture with any party for the same.
3. All activities, which were being conducted by the Respondents/Defendants on the property in dispute prior to the order dated 23rd December, 2014, may continue till the suit is finally disposed of.

It appears that although written statement has been filed by the defendants but the trial of the suit has not commenced. There is nothing on record to show that the plaintiffs took any step for earlier disposal of the suit. Instead, the plaintiffs have filed another application in the year 2020 on the basis of information received under RTI Act, 2005 from the Higher Education Department, Government of West Bengal to the effect that the proposal of the Vivekananda International University has been dropped in view of the decision taken by the governing body of the mission. The petitioner appears to have received this intimation on 20th January, 2020.

The petitioners now file an application praying, inter alia, for an order of appointment of receiver of the suit property. The said application was moved ex parte. The learned Single Judge, in our view, was right in not deciding the matter ex parte. The learned Judge has directed service of the petition upon the respondents and fixed on 3rd December, 2020 for hearing of the said application. The discretion exercised by the Trial Judge in refusing to pass any ex parte ad interim order in a pending suit where the pleadings are complete and no grave urgency being made out seems to be justified.

Under such circumstances, we do not find any reason to interfere with the impugned order. However, the respondents shall file their affidavit-in-opposition in the pending proceeding on or before 18th November, 2020 upon prior service upon Dwip Raj Basu, Advocate, 10, Old Post Office Street, Ground Flr, Room Nos.13/1 & 13/2, Kolkata

– 700 001. Dwipraj.basu74@gmail.com (Mobile No. 9830671428), reply thereto, if any, shall be filed within 1st December, 2020 upon prior service to the learned Advocate representing the respondents in the Trial Court. We have been given to understand by the plaintiffs that the suit is otherwise ready for hearing. This order shall not prevent the learned Trial Court to proceed with the trial of the suit if it is otherwise ready for hearing and dispose of the suit as expeditiously as possible without granting any unnecessary adjournment to either of the parties. All the parties present before us have assured that they shall cooperate with the hearing of the suit as and when it commences.

It is needless to mention that the learned Trial Court shall decide the application in accordance with law without being influenced by any observation made by us in this order.

The appeal being FMAT 373 of 2020 and the application being CAN 2 of 2020 are disposed of.

All parties are to act on a website copy of this order on the usual undertaking.

(Jay Sengupta, J.)

(Soumen Sen, J.)