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**FMAT 470 of 2020**

**IA No. CAN 1/2020**

***Debasish Pal***

***-vs-***

***Alok Niwas Pvt. Ltd. & Ors.***

**( Via Video Conference)**

**Mr. Aniruddha Chatterjee**

**Mr. Tauhid Khan**

**Mr. Kushal Chatterjee**

**Md. Monirul Islam Mollah**

**Mr. Debabrata Roy**

**..... for the appellant/petitioner.**

**Mr. Jaydip Kar**

**Mr. Indranil Roy**

**Mr. Sanjay Mukherjee**

**Mr. Dipayan Choudhury**

**Mr. Suvradal Choudhury**

**Mr. Souma Bhattacharya**

**Ms. Priyanka Chowdhury**

**..... for the Respondent No.1.**

The present appeal is arising from an ad interim order dated October 30, 2020 passed by the learned Civil Judge, Senior Division, 1<sup>st</sup> Court at Howrah in Title Suit No. 252 of 2020 whereby an whereunder the appellant herein being the defendant no. 1 in the said title suit was restrained from changing the nature and character of the suit property and was also restrained to create any third party interest in the suit property or encumbering the same in any manner till November 24, 2020. By the said

order the plaintiff was directed to comply with the provisions of Order 39 Rule 3A and 3B of the Code of Civil Procedure.

Being aggrieved by the said impugned order, the defendant no.1 in the suit had carried out the present appeal. The plaintiffs before the learned trial Court filed the said title suit against number of defendants, inter alia, praying for a declaration for the unregistered agreement for development executed by the said defendant no.1 and defendant no.2 dated December 1, 2015 be declared as illegal, void and non-est since the same is in conflict with the registered deed of conveyance dated November 1, 2015 executed by the defendant no.1 in favour of the plaintiff along with other consequential reliefs.

Mr. Chatterjee, learned Ld. Counsel for the appellant contends that the impugned order is not sustainable in law as the same is devoid of any reason and in any event the appellant had a valid right to execute the said development agreement dated December 1, 2015 under which the development work is being carried out on the suit land. The construction is being carried out on the suit land lawfully.

Mr. Joydip Kar, learned Senior Counsel appearing for the plaintiff/respondent no.1, inter alia, contended

that his client has a right of buy the suit land from Mr. Chatterjee's client at the first option whenever Mr. Chatterjee's client would wish to sell of the same. Thus, Mr. Kar's client has a right of preemption to this extent and in violation of such right of Mr. Kar's client the appellant could not have gone for or cannot go for any other agreement or enter into any other contract with anybody. As such Mr. Kar contends that the said title suit was filed to desist Mr. Chatterjee's client to take any step contrary to the said right of Mr. Kar's client. Consequentially an application for injunction was also moved in which the said impugned ad interim order was passed.

We have considered the arguments made on behalf of the parties and the law cited by both the sides on this score.

After considering the materials on record and after perusing the impugned order, it appears to us that a substantial quantity of land is involved in the title suit. The order has been passed at an ad interim stage by which the learned trial Court has sought to protect the suit land until the injunction application is finally adjudicated upon.

In so far as the contention of Mr. Chatterjee's client is concerned that the impugned order is devoid of any

reason, we are not with him and we feel that from a meaningful reading of the said impugned order it is evident as to the reasons why the learned trial Court intended to protect the suit land only till the injunction application is disposed of.

It is settled law that while interfering with the ad interim order, the Appeal Court must exercise its discretion very carefully and slowly considering the facts and circumstances under which the order has been passed.

In view of the foregoing discussion, we think it proper not to interfere with the impugned ad interim order at this stage. The defendants, being the respondents before the learned trial court in the injunction application, will file their written objection to the injunction application on or before 17<sup>th</sup> November, 2020 with an advance copy of the Affidavit-in-Opposition being served upon Mr. Kar's client. The plaintiff shall file its Affidavit-in-Reply thereto, if any, on or before 22<sup>nd</sup> November, 2020 upon an advance copy being served on the defendants.

The matter will be taken up for hearing on 24<sup>th</sup> November, 2020 as already fixed by the learned trial Judge.

It is expected that the parties will not seek any unnecessary adjournment.

In any event, the learned trial Judge is requested to complete the hearing of the injunction application on or before first week of December, 2020.

We further make it clear that it will be open to the learned trial Judge to consider all the issues and points to be raised and argued by the parties on merits.

No order as to costs.

FMAT 470 of 2020 along with CAN 1 of 2020 are disposed of.

All concerned parties shall act in terms of the copy of the order downloaded from the official website of this Court.

(Aniruddha Roy, J.)

(*Subrata Talukdar, J.*)