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**F.M.A.T.52 of 2021
CAN 1 of 2021**

**Pradip & Kumkum Ghosh Family
Foundation & Ors.**

Vs.

Ramkrishna Vivekananda Mission & Ors.

Mr. Aniruddha Chatterjee,
Mr. Chayan Gupta,
Mr. Kausik De,
Mr. D. Basu,
Ms. Mohini Majumdar,
Mr. Saptarshi Maal,
Ms. Kriti Malhotra.

...for the Appellants.

Mr. Debashi Kundu, Sr. Adv.,
Mr. Lokenath Chatterjee,
Mr. Joydeb Ghorai,
Mr. Saugata Banerjee,
Ms. Ayushi Kundu.

...for the Respondents.

The present appeal arises from an order No.43 dated 6th January, 2021 passed by the learned Civil Judge (Senior Division), 1st Court, Barasat rejecting an application for temporary injunction on the multiple grounds including that the injunctions as sought for is in effect of encroaching upon the order passed by the Division Bench of this Court in an earlier appeal and, therefore, it would not be proper to supersede such order.

Simultaneously therewith, the trial court observed that if there is no anticipated injury

which is one of the essential ingredients to grant injunction, the injunction order cannot be passed.

The instant litigation has a chequered history and the parties are litigating since 2004 when the plaintiffs/appellants filed a suit for decree for specific performance of the memorandum of understanding dated 10th January, 2013 and agreement dated 7th August, 2013 and that the termination thereof is illegal and invalid. Consequential relief in the form of perpetual injunction and/or permanent injunction are also sought for. It was the specific stand of the plaintiffs/appellants that the aforesaid memorandum of understanding and the agreement were entered into with the defendant no.1, respondent no.1 herein for setting up of the university on the property owned by the said defendant and the cost of such establishment would be borne by the plaintiffs/appellants. Subsequently, the dispute arose between them when the memorandum of understanding and agreement were terminated and an application for temporary injunction was taken out by the plaintiffs/appellants to protect the interest allegedly created under the said memorandum of understanding and the agreement. The matter

travelled to this Court when the appellants filed the First Misc. Appeal being F.M.A.T.No.1110 of 2014 which was disposed of on consent in the following terms;

“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.”

Amidst the pendency of the said injunction order, another application was taken out by the plaintiffs/appellants alleging that the respondent no.1 has stopped the construction work of the building for setting up of the university and an information was sought under the Right to Information Act which evinced that the proposal for setting up of such university has been

abandoned and/or dropped by the governing body of the respondent no.1 and the same has been duly communicated to the concerned department of the Government of West Bengal. This gives impetus to the genesis of the present application taken out by the plaintiffs/appellants seeking further injunction against the respondent no.1 from making any construction other than the construction work for the university.

In course of the hearing, we ask specific query to Mr. Kundu, learned Senior Advocate appearing for the respondent no.1 whether his client is intending to make any construction for the purpose other than the purposes which was recognized in the order passed in an earlier miscellaneous appeal. He submits on instruction that there is no proposal for any construction nor there is any construction work going on at present. However, he drew our attention to the averment made in the application for temporary injunction filed by the plaintiffs/appellants that he himself was aware that there is no construction work going on. He enlightened us on the subsequent proposal mooted out with the Government of West Bengal for establishment of the university which according to him is pending consideration before

the Government.

Since the aforesaid facts is disclosed for the first time in the instant appeal, we do not venture to go into such aspect. However, we feel that the present appeal can be conveniently disposed of on the submission of Mr. Kundu that there is no intention on the part of his client to continue with the construction. Since the injunction was restricted to a construction work other than for the purpose of university and there is no intention forthcoming to construct for any other purposes than what was intended, we do not feel that mere on an apprehension or on the basis of the unsubstantiated materials, the Court would bless the appellants with the order of temporary injunction. We feel that the aforesaid submission sufficiently takes care of the apprehension shown in the said application for injunction and, therefore, we do not intend to interfere with the ultimate decision of the impugned order.

The appeal and the applications are disposed of.

(Harish Tandon, J.)

(Kausik Chanda, J.)

