

08.03.2021
Item No.25
Ct. No.12
CHC

**F.M.A.T.168 of 2020
I.A. No. C.A.N.1 of 2020 (Old No.CAN 2421 of 2020)
C.A.N.2 of 2021
(Physical Hearing)**

**Ashim Kumar Rakshit
Vs.
Raju Kumar Yadav**

Mr. Saunak Bhattacharya
...for the appellant

Mr. S. P. Mukherjee,
Mr. Debanjan Mukherjee
...for the respondent

Re: CAN 2 of 2021

There is a delay of 41days in preferring the appeal.

We have perused the petition for condonation of delay. We are satisfied with the explanations offered for not being able to file the memorandum of appeal within a period of limitation.

On such consideration, the delay of 41 days in filing the memorandum of appeal is condoned.

CAN 2 of 2021 is allowed.

Let the appeal be registered if it is otherwise in form.

On consent of the parties the appeal and application stand disposed of by this order.

The appeal is directed against an ad interim order passed in favour of the plaintiff. The injunction application was taken up *ex parte* as there was no caveat. The case of the plaintiff before the learned trial Judge was that the plaintiff and the defendant are partners in the partnership firm in which the defendant is a tenant and the plaintiff invested a sum of Rs.5 Lakh for the purpose of business. The trade licence, electric bill and the agreement was executed in the name of the plaintiff and the defendant and the plaintiff is in possession in the suit premises by virtue of the said partnership deed. Attempts are now being made to oust the plaintiff from the suit premises. It was on such consideration and on the basis of the averment made in the petition read with electric bill and other documents annexed to the petition an ad interim injunction order was granted by which the defendant was restrained from ousting and/or dispossessing the plaintiff from suit premises without due process of law.

Learned counsel for the appellant has submitted that trial court has ignored that there is an Arbitration Clause in the partnership agreement and it is essentially a dispute arising out of the partnership deed. In view of such arbitration clause in the partnership deed civil court has no jurisdiction to determine the suit.

It was moreover argued that it is not the plaintiff but the defendant is in possession of the suit premises. Ordinarily an ad interim order of injunction should not be for an indefinite period as on a true facts being revealed, it may appear that party who suffered the order of injunction ought not to have suffered from such order. We feel that ad interim order should have been for a limited duration. However, it appears that the impugned order was passed on 4th December, 2019 and the appeal was preferred on 13th February, 2020 and since then this matter is pending before this Court. In view of the fact that ad interim order is continuing, and the appellant has not filed any affidavit-in-opposition or an application for vacating of the interim order.

We dispose of this matter by giving liberty to the appellant to file affidavit-in-opposition within two weeks and reply if any within two weeks thereafter without disturbing the ad interim order.

Learned trial Judge is directed to dispose of the injunction application after completion of affidavits within four months thereafter without granting any unnecessary adjournment to either of the parties. It is made clear that learned trial Judge shall not be influenced by its earlier order or by the order passed by this Court in finally disposing of the injunction application.

Urgent Photostat certified copy of this order, if applied for be given to the parties on priority basis.

(Subhasis Dasgupta, J.)

(Soumen Sen, J.)