

29 18.02.2021

Ct. No. 02

akd

F.M.A.T. 177 of 2020

With

CAN 1 of 2020

Sk. Sahinul Islam

Vs.

Pawanputra Sales Pvt. Ltd. & Ors.

Mr. Gopal Chandra Ghosh,

Mr. Sobhan Majumder.

... for the appellant.

Mr. Saptangshu Basu,

Mr. Soumya Roy Chowdhury,

Ms. Mrinalini Majumdar,

Mr. Meghajit Mukherjee,

Ms. Priyanka Sharma,

Ms. Shivangi Thard.

... for the respondent

nos. 1 to 24 and 26.

The instant appeal arises from an order rejecting an application for temporary injunction solely on the ground that if the injunction is granted against the defendant no. 26, he will suffer most having invested more than 124 crores of rupees in the project.

The suit was filed by the plaintiff/appellant claiming an undivided/undemarcated right in respect of the property and the application for temporary injunction was taken out so that the property may not be developed in his absence. Any usurpation of such right would create an immense injury to the plaintiff and in the event the suit succeeds, they would not be in a position to revert the position if the construction is allowed to be made.

The balance of convenience and inconvenience does not have any meaning, if it causes inconvenience to one, which is greater than the inconvenience they would cause to the others, as he claimed a lesser right. The right has to be balanced between the parties and parity is to be maintained considering the

convenience and inconvenience while granting an order of temporary injunction. A resourceful person with money and otherwise does not stand on a higher pedestal in the Court of law, which recognizes the equality of law inhering the basic fundamental right enshrined under the Constitution.

However, in course of hearing both the parties suggested that if the units/flats in a proposed multistoried building are kept as a security and if injunction is passed in respect thereof against the defendants, it would sub-serve the purpose for the time being.

The aforesaid suggestion was routed out so that the project, which is on going, may not be affected at the behest of the alleged co-sharers claiming shares in respect of the suit property.

Mr. Basu, learned Senior Advocate, appearing on behalf of the respondents hands over the details of the flats available in several towers sought to be constructed at the suit property, some of which are complete in all respect and the others would be completed in a probable date indicated therein.

Mr. Ghosh, learned Advocate appearing for the appellant indicated three flats, which may be kept as security and the injunction may be passed thereupon till the disposal of the suit so that in the event the suit succeeds the plaintiff would not be deprived of his just remedy claimed in the suit.

In view of the consensus arrived before us, the impugned order is set aside and the respondents are restrained from alienating, transferring, encumbering and/or dealing with the flats/units shown in serial no. 2 in the first block of the flats and serial nos. 3 and 10 in the second block of the flats shown in the sheet of papers filed before us and handed over to Mr.

Ghosh at an earlier point of time, till the disposal of the suit.

It is made clear that two of the flats/units shown in serial nos. 3 and 10 are incomplete and probable date of completion has been shown in the said document and, therefore, the respondents are directed to complete the aforesaid flats before they proceed to sell out the other flats shown as incomplete therein.

With the above observations, the appeal and connected application are disposed of.

(Harish Tandon, J.)

(Kausik Chanda, J.)