

Ct. 17
Item No.12
07.04.2021
(suvendu)

**FMAT 232 OF 2021
With
CAN 1 of 2021**

(Through Video Conference)

**Basudev Malik
Vs.
Krishnapada Bhowmick**

Mr. Mahammad Mahmud
Mr. Biswajit Bhattacharya
.....for the appellant

The appeal and the application are taken up together.

The appellant has come up against refusal to pass an ex-parte order. The learned trial Judge while narrating the facts has come to the conclusion that the plaintiff has a good prima facie case to go for trial but refused to pass ad interim order on the ground that the plaintiff was not in possession of the 'A' schedule property and the balance of convenience would require that the defendant should be heard before any order is passed.

We are of the view that the learned trial Judge has overlooked the fact that if in the meantime the defendant changes the nature and character of the suit property and alienate the suit property, it would irreparably prejudice the plaintiff in the suit. In fact, the plaintiff in the petition prayed for an ad-interim injunction restraining the

defendant and his men and agents from changing the nature and character of the “A” schedule property during the pendency of the petition.

We feel that the plaintiff was able to establish prima facie case before the learned trial court. On such consideration, the defendant is restrained from creating any change in the nature and character of the suit property for a period of ten weeks from date or until injunction application is disposed of whichever is earlier.

The plaintiff shall serve a copy of this order upon the respondent by speed post with acknowledgement due within one week from date and communicate a copy of this order to the learned trial court for information and future action.

The appeal and the application are disposed of.

(Kausik Chanda, J.)

(Soumen Sen, J.)