

24.03.2021
SL No.2
Court No.12
(gc)

**FMAT 236 of 2021
With
CAN 1 of 2021**

**Aryan Towers Owners Association & Anr.
Vs.
Natural Merchants Pvt. Ltd. & Ors.**

(Via Video Conference)

Mr. Ayan Banerjee,
Mr. Bratin Kumar Dey,
Mrs. Anjana Banerjee,
...for the Appellants.
Mr. Saptarshi Datta,
Mr. Arindam Banerjee,
...for the Respondents Nos.1 to 20.

The appeal and the application are taken up together for hearing and disposed of by this common order.

The appeal is directed against an order dated 17th February, 2021. The Memorandum of Appeal was presented on 17th March, 2021, the day, when the interim order was going to expire. The said petition was affirmed on 18th March, 2021. By that time, the interim order dated 17th February, 2021 has lost its force. We do not know under what circumstance such ad-interim order was extended. It is submitted that the said interim order was extended subsequently. However, the said order is not under challenge before us. We have been further informed that the respondents in the suit have filed a prior suit in which the subject matter of the subsequent suit is also under consideration and an interim order was initially passed in favour of the respondents in the earlier suit, which fact,

however, was not brought to the notice of the learned Civil Judge (Senior Division), 1st Court at Barasat at the time of moving the said application ex parte. However, it has been candidly admitted that the said interim order had expired in the meantime and was not extended due to default on the part of the learned Counsel representing the present appellants in the Trial Court. We feel that such facts are required to be brought to the notice of the learned Trial Judge before whom both the suits are pending.

It is further argued that the reliefs allowed by the ex parte ad-interim order is in the nature of the final reliefs which ought not to have passed at the ad-interim stage ex parte.

On the basis of the materials available before the learned Trial Judge, we are unable to form an opinion that the learned Trial Judge has committed illegality in passing the ad-interim order. The defendants were restrained from causing any obstruction in the ingress and egress of the plaintiffs into the 'A' Schedule property. The ex parte order was for a limited duration. The appellants have the right to approach the Trial Court as a matter of law to ask for variation and/or modification and/or vacating the ad-interim ex parte order under Order 39 Rule 4 of the Code of Civil Procedure.

However, having regard to the fact that the earlier suit was filed by the present appellants concerning the Schedule

properties, and an ad-interim order was passed in favour of the appellants, we feel that the learned Trial Judge shall consider such facts while extending the interim order in future. We have been informed that this ad-interim order was extended till 8th of July, 2021. The appellants shall be at liberty to apply for vacating ex parte ad-interim order upon notice to the plaintiffs in T.S.139 of 2021.

The learned Civil Judge (Senior Division), 1st Court at Barasat is requested to consider the said application for vacating the ad-interim order of injunction, if filed by the appellants, as expeditiously as possible and subject to the convenience of the learned Civil Judge (Senior Division), 1st Court at Barasat. We express no opinion with regard to the merits of the matter and the learned Trial Judge shall consider the matter uninfluenced by any observation made by us in this order.

With the aforesaid observation, the appeal being FMAT 236 of 2021 and the connected application being CAN 1 of 2021 are disposed of.

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

(Saugata Bhattacharyya, J.)

(Soumen Sen, J.)