

**16.04.2021**

AD 6

Ct.No. 03

*Amalranjan*

**IN THE HIGH COURT AT CALCUTTA  
CIVIL APPELLATE JURISDICTION  
APPELLATE SIDE**

**FMAT 270 of 2021  
With  
IA No: CAN/1/2021**

**Subhasis Chanda & Ors.  
Vs.  
Madhabendranath Roy & Ors.**

Mr. Rabindranath Mahato  
Mr. Aritra Shankar Roy

... for the appellants

The issue involved in this appeal is very short.

We are entertaining this appeal dispensing with all formalities.

The order complained of was made on 16<sup>th</sup> March, 2021, by the learned court below refusing an order of injunction.

Today is 16<sup>th</sup> April, 2021 exactly one month after the impugned order was passed.

Learned counsel for the appellants/ petitioners wants this court to pass an order of injunction restraining the respondents from catching fish in the pond in question. He moves this application without notice to the respondents submitting that no caveat has been lodged in this court.

We are of the view that such an order can only be considered in the presence of the respondents.

Thirty days have lapsed after the impugned order was made. The appellants are without any interim order. Learned court below has fixed the matter on 3<sup>rd</sup> June, 2021 as the returnable date. Here the learned court below has made a mistake. When an ad-interim ex parte order was made, the returnable date ought to have been much shorter.

Considering the prima facie case and the balance of convenience, we dispose of the appeal by directing that on the learned court below being approached by the appellants, it shall forthwith prepone the returnable date of the application to such a date that it is able to hear out the subject application in the presence of the respondents within 10 days of being approached by the appellants with this order.

With these observations, the appeal (FMAT 270 of 2021) and the application (CAN 1 of 2021) are disposed of.

**( I. P. Mukerji,J. )**

**( Md. Nizamuddin,J. )**