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Ct-08

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**FMAT 388 of 2021**

with

**I.A No. CAN 1 of 2021**

**Jayashree Nandy**

**Vs.**

**Dhanalaxmi Mercantile Pvt. Ltd. & Ors.**

Mr. Jishnu Chowdhury  
Mr. Souradeep Banerjee  
Ms. Sanjana Sinha  
... For the Appellant

In spite of service, the respondents are not represented.

In view of the earlier order we are inclined to take up this matter in absence of the respondents and to consider the matter in their absence.

Mr. Jishnu Chowdhury, learned counsel appearing for the appellant, on instruction submits that the hearing of the injunction application was fixed on 6<sup>th</sup> May, 2021 before the trial court.

Learned court below has refused to grant any ad interim order of injunction on the prima facie view that the deed of conveyance dated 07<sup>th</sup> August, 2014 has been executed by way of impersonification on behalf of the Shova Chatterjee without hearing the defendants. In a suit for cancellation of a deed, the court is required to arrive at a prima facie view that there are materials, which could justify a case being made out that the deed may not have been executed by the executor.

Mr. Chowdhury further submits on instruction that no amount was paid to her towards consideration, although page 103 of CAN 1 of 2021 contains some details about

payments. Mr. Chowdhury has emphatically submitted that the signature of Shova Chatterjee appearing at page 103 of the application is not the signature of Shova Chatterjee and it can be easily differentiated from the other admitted signatures.

On the basis of the available materials, we are of the prima facie view that the appellant has been able to make out a prima facie case and the balance of conveyance lies in favour of the plaintiff/appellant to pass a protective order. Moreover, the appellant is having 50% share in the property in question. In absence of any contrary materials available on record, we are inclined to grant interim order restraining the respondents from selling, transferring, alienating and/or encumbering the suit property in any manner whatsoever in favour of third party for a period of eight weeks from date or till the disposal of the injunction application.

We have been informed that the trial court has fixed the matter on 22<sup>nd</sup> December, 2021.

We, accordingly, dispose of the appeal and the connected application being CAN 1 of 2021 even at the admission stage by directing the learned Civil Judge (Senior Division), 1<sup>st</sup> Court, Alipore, South 24 Parganas to dispose of the injunction application in suit being Tile Suit no. 441 of 2021 within eight weeks from date without being influence by any observations made either in the order passed by the Trial Court or by this court.

We did not get the opportunity of hearing the respondents. We make it clear that our observations are on the basis of the available record.

The respondents/defendants are at liberty to file their written objection, if any, to the injunction application preferably by 22<sup>nd</sup> December, 2021.

FMAT 388 of 2021 and CAN 1 of 2021 are disposed of.

**(Ajoy Kumar Mukherjee,J.)**

**(Soumen Sen, J.)**