

05.08.2021

Sl. 1
Ct.No. 03
Amalranjan

(Via Video Conference)

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

**FMAT 389 of 2021
With
CAN 1 of 2021**

**Chandan Baksi
Vs.
Sajal Das & Ors.**

Mr. Jaydip Kar, Sr. Adv.
Mr. Aniruddha Chatterjee
Mr. Iftekar Munshi

... for the appellant

Mr. Gaurav Purkayastha
Mr. Ashutosh mukherjee
Ms. Nirvika Dutta

...for the respondent no. 1

This is an appeal from an ex parte order dated 21st June, 2021 of the learned court below refusing the order of injunction as prayed for in the interim application, by the appellant.

Although the ex parte order was made on 21st June 2021, the returnable date of the application was made 6th September, 2020, i.e., almost after three months.

We feel this is the real reason for prejudice suffered by the appellant, because he has had no opportunity to present his case as early as possible to reiterate his case for an interim order, in the presence of the respondents.

Dispensing with all formalities, we dispose of this appeal treating the same as on the day's list, with an order directing the learned court below to prepone the returnable date to a date not beyond 10 days from the date of communication of the order and hear out the interim application, at the motion stage, upon notice to and hearing the appellant and by a reasoned order.

Till the learned court below is in a position to hear out the interim application and consider an appropriate order to be passed, the parties shall not change the status quo of the property in question, existing as of today.

We take this opportunity to observe that in numerous cases where an interim application is moved before the district courts ex parte for an interim order, the application after grant or refusal thereof ex parte is made returnable after a long time, sometimes a few months. When an ex parte application is considered, an opportunity should be given to the parties to appear before the court in the shortest possible time after service of the cause papers upon them, so as to enable the respondents to resist the interim order from being passed or to enable

the petitioner to reiterate his case for an interim order which is refused ex parte.

Thus, the learned judges of the district judiciary should not in a routine manner subject the defendant to making an application under Order 39 Rule 4 of the Civil Procedure Code. In any event this remedy is not open to the plaintiff who fails at the ad interim ex parte stage but has a likelihood of success in the presence of the defendant.

We expect this observation to be duly considered by all the judges of the district judiciary while granting or refusing an ex parte interim order.

We direct the learned Registrar General, High Court, Calcutta, to communicate this order to all the learned district judges in the state with a direction upon them to further communicate this order to all the learned judges in the subordinate judiciary, for their guidance and necessary action.

The appeal and the connected application are hereby disposed of.

(I. P. Mukerji,J.)

(Aniruddha Roy,J.)