

DL. December
12. 10, 2021

F.M.A. 972 of 2021

Ms. Shyamali Das (Ghara)

Vs.

Sri Amit Chakraborti

Mr. Syed Chandan Hossain,
Mr. Annab Roy,
...for the appellant.

Ms. Shohini Chakraborty,
Ms. Prajjaini Das,
...for the respondent.

The appellant is aggrieved by the order dated August 13, 2021 passed by the learned Civil Judge (Senior Division), Fifth Court at Alipore, South 24-Parganas, in Title Suit No. 711 of 2021.

The learned advocate appearing on behalf of the appellant submits that in view of the fact that caveat was lodged by the defendant/appellant, no ex parte order of injunction could have been passed by the learned trial judge and that it was incumbent upon the trial court to put the appellant on notice before considering the application for injunction.

We are in complete agreement with the submission made on behalf of the appellant. In fact, we feel that the subsequent order dated August 24, 2021, by which the learned trial judge rejected the application filed by the appellant under Section 151 of the Code of Civil Procedure for recalling of the order dated August 13, 2021, suffers from misconception of law. However, the fact remains that till date the ad interim order of injunction is in

existence.

To put an end to the matter, we direct the learned Civil Judge (Senior Division), Fifth Court at Alipore, to hear and dispose of the injunction application as expeditiously as possible, preferably with February 15, 2022. The defendant/appellant is directed to file her written objection to the application for injunction within two weeks from date; reply thereto, if any, is to be filed by the plaintiff/respondent within two weeks thereafter.

The parties are directed to bring this order to the notice of the learned trial judge to enable him to dispose of the injunction application in terms of our direction.

The ad interim order of injunction granted by the learned trial judge is extended till February 15, 2022 or until disposal of the injunction application, whichever is earlier. Such extension of ad interim order of injunction shall not be construed as confirmation of the order dated August 13, 2021 in any manner whatsoever.

The learned trial judge shall dispose of the injunction application without being influenced by its earlier order dated August 13, 2021 or by any of the observations made by this court in this order.

The appeal itself is disposed of at the admission stage

In view of disposal of the appeal, nothing remains in the application for stay and the same also stands disposed of.

There will be no order as to costs.

Photostat certified copy of this order, if applied

for, will be made available to the applicant within a week from the date of putting in the requisites.

(Soumen Sen, J.)

dns

(Ajoy Kumar Mukherjee, J.)