

08.12.2021
Item no.27

Aloke
Ct. no. 8

FMAT 548 of 2021
with
CAN 1 of 2021
Sri Nilambar Mukherjee
Versus
Smt. Aditi Mukherjee & Anr.

Mr. Sanjay Mukherjee, Advocate
Mr. Dhananjay Nayak, Advocate
... for the appellant

This appeal arising out of an order dated 23rd August, 2021 passed by the learned Civil Judge (Senior Division), 7th Court at Alipore in Title Suit No. 758 of 2021, refusing to pass an ad interim order on the ground that the petitioner has failed to produce the writ application filed by them before the High Court at Calcutta.

It appears from the impugned order that the plaintiff did not produce the copy of the writ petition and on the basis of failure to produce the same the learned Judge was of the view that in the event any order is passed in the said proceeding it may not be in conformity with the writ proceeding. Moreover, the learned trial Judge wanted to have a look at the writ petition to find out whether the reliefs claimed by way of injunction or otherwise in any way has any nexus with the prayers made in the injunction application.

The learned counsel for the plaintiff submits that the writ petition has been filed before this Court but the copy of the writ petition was not produced at the time of hearing. The parties seeking an ad interim order of injunction which is an equitable relief and required to disclose all the facts with sufficient particulars so as to enable the Court to decide whether any relief should be granted to the petitioner.

Learned counsel for the petitioner submits that no order has been passed in the writ proceeding.

On consideration of the whole facts, normally in a suit for partition the order of status quo with regard to possession is a natural character of the properties.

However, it is equally important that when a proceeding is initiated concerning the other co-sharerers the Court needs to be satisfied whether any relief shall be claimed in either proceedings and, thereafter to consider whether ad interim order of injunction would be granted in a case. The approach of the learned trial Court cannot be faulted. However, having regard to the fact that the writ petition has been disclosed in this proceedings, we permit the writ petitioner to renew its prayer before the learned Trial Judge by filing a supplementary affidavit disclosing the copy of the writ petition. Learned Trial Judges shall decide the prayer for injunction after taking into

consideration, the aforesaid reason and also keeping in mind that in a partition suit the interest of a co-sharerers should be preserved in relation to the undivided properties in question.

With the above observations, the appeal and the application stands disposed of. However, there shall be no order as to costs.

(Ajoy Kumar Mukherjee)

(Soumen Sen, J.)