

17.11.2021
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FMAT 637 of 2021
with
CAN 1 of 2021
(via video conferencing)

Housing Consultancy Pvt. Ltd.
Vs.
Sri Partha Chatterjee

Mr. Sukumar Bhattacharyya
Mr. Sourav Sen
..... for the appellant

The appellant has assailed an order refusing ex parte ad interim injunction in a suit for specific performance. Learned court below expressed doubt with regard to the existence of a concluded contract. Holding such and observing that the interest of the appellant is substantially protected by operation of Section 52 of the Transfer of Property Act, it directed issuance of notice upon the defendant and fixed the injunction application for final hearing.

Learned Counsel appearing for the plaintiff/appellant submits that his client was a tenant under the defendant/respondent and the parties had initially entered into an arrangement for developing the property. Pursuant to such arrangement, the appellant had paid a sum of Rs.1,35,000/-. Subsequently, an agreement for sale of the property in favour of the appellant was executed on 17.08.2021. Trial court failed to consider the

aforesaid facts and the balance of convenience and inconvenience of the parties. He relies on a judgement reported in **2010(1) ICC 667 (M/s. GTZ (India Private Limited) vs. Power Electronic Engineers & Ors.)** in support of his contentions.

We have the materials on record. A money receipt dated 17.08.2021 is relied upon as an agreement for sale of the property. Trial court was of the prima facie view that the said document may not be a concluded contract and in the absence of a prima facie case refused to grant ex parte ad interim injunction. We do not find any illegality or irregularity in such finding recorded by the trial court. Authority relied upon by the learned Counsel for the appellant is factually distinguishable as an uncontrovertible agreement for sale had been placed on record making out a strong prima facie case in favour of the plaintiff/appellant. Hence, we are of the opinion that no case of interference is made out. We, however, clarify that the observations made with regard to non-existence of a concluded contract by and between the parties by the learned court below as well as this Court are tentative and shall not be binding on the court below during the hearing of the injunction application which shall be decided independently and in accordance with law.

With this observation, the appeal is disposed of.

In view of disposal of the appeal, connected application being CAN 1 of 2021 is also disposed of.

(Bivas Pattanayak, J.)

(Joymalya Bagchi, J.)