

02.02.2021

Court No. 02
Item No. DL – 25
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(Appeal Disposed of)

FMAT 797 of 2019

with

CAN 2 of 2019

(CAN 10290 of 2019)

Anup Kumar Sharma & Ors.

Vs.

Rajendranath Sharma & Ors.

Ms. Sohini Chakraborty, Advocate

Ms. Prajaani Das, Advocate

.....for the Appellants

Mr. Saunak Bhattacharya, Advocate

.....for the Respondents

By virtue of the impugned order, the Court had disposed of the application for temporary injunction without recording any reasons. The opening sentence of the impugned order suggests that the date was fixed for passing an ex parte order regarding injunction. The next paragraph contains the recitation of the facts and the submissions of the learned Advocate appearing for the plaintiffs/respondents and the subsequent paragraph contains the decisions cited at the Bar.

Thereafter there is no reflection on the existence of a prima facie case, irreparable loss and injury and balance of convenience and inconvenience. The trial Court has simply proceeded on the premise that he perused the material-on-record and is of the opinion that the plaintiffs should be given an opportunity to protect the suit property till the disposal of the suit.

The impugned order runs counter to the mandate of the Supreme Court in case of ***Shiv Kumar Chadha Vs. Municipal Corporation of Delhi*** reported in **1993 SCC (3) 161** and ***Morgan Stanley Mutual Fund Vs. Kartick Das*** reported in **1994 SCC (4) 225**. The Apex Court has indicated the importance of recording reasons in an

adjudicatory process; more particularly, when an ex parte order of injunction is passed. The reason is the heart and soul of an order without which it cannot survive. It is the statutory duty cast upon the Court to record the reason before embarking its journey on the disposal of the applications filed before it. If the order is bereft of reasons it cannot withstand on the anvil of law. Precisely for that the order is lacking reason, it cannot be sustained.

The order impugned is set aside.

The trial Court is directed to re-hear the application for temporary injunction and efforts shall be shown to dispose of the same within two weeks from the date of communication of this order on merit in presence of both the parties.

Both the counsel appearing before us assure cooperation and assistance to the learned Judge in the trial Court in adhering the time limit indicated herein and shall not seek for adjournment except under unforeseen and unavoidable circumstances.

For abundant precaution, we make it clear that we have not gone into the merit of the application which shall be decided by the Court independently and none of the observations made hereinabove, if incidentally or accidentally touches upon the merit, shall have no persuasive effect in disposing of the application for temporary injunction.

The learned Judge is also requested to make endeavour to bring the suit to its logical conclusion at an earliest, preferably within six months from the date of communication of this order.

The appeal being **FMAT 797 of 2019** and the connected application being **CAN 2 of 2019** (CAN 10290 of 2019) are accordingly **disposed of**.

(Harish Tandon, J.)

(Kausik Chanda, J.)