

08.03.2021
Item No.10
Ct. No.12
CHC

**F.M.A.T.433 of 2020
(Physical Hearing)**

**Basudeb Bhattacharya
Vs.
Amal Kumar Chatterjee @ Amal Chatterjee & ors.**

Mr. Asit Baran Raut,
Mr. Asit Kr. Chowdhury,
Mr. Tuhin Subhra Raut
...for the appellant

This appeal is directed against the order dated 9th September, 2019 in connection with an application filed under Order XXXIX Rules 1 and 2 read with Section 151 C.P.C. in suit for specific performance.

Learned trial judge although was of the opinion that there is a *prima facie* case in favour of the plaintiff to go for the trial, however, did not pass any interim order in favour of the plaintiff. The ad interim order was refused. The matter was fixed on 5th October, 2020 for further consideration.

We are informed by the learned advocate on behalf of the appellant that till date injunction petition is pending and the respondents are evading appearance before the trial court. However, we do not have any record to show that the defendants were evading service and the matter did not proceed for such non-

appearance on part of the opposite parties/defendants.

Considering what stated in the impugned order, we are of the view that plaintiff was able to make out a *prima facie* case and we also felt that some protection order may be granted to the plaintiff till the injunction application was considered next by the court below. On such consideration, we restraint the defendants from alienating and/or encumbering the suit properties for a period of eight weeks from date.

Learned trial court is directed to dispose of the application for ad interim injunction within the aforesaid period without granting any unnecessary adjournment to either of the parties. In the event, the matter could not be disposed of within the aforesaid period, the order can be suitably extended upon recording reasons thereof.

The petitioner was immediately communicate this order to the learned 11th Bench of City Civil Court at Calcutta for taking necessary action.

F.M.A.R.433 of 2020 stands disposed of .

(Subhasis Dasgupta, J.)

(Soumen Sen, J.)