g.b. 23

11.03.2021
Ct. No.12

FMAT 584 of 2020
With
IA No: CAN/1/2021

Manimala Ghosh & Anr.
Vs
M/s. K. J. Buildcon Private Ltd. & Ors.

Mr. Dilip Kumar Mukherjee
Mr. Lord Chatterjee
.......For the Appellants

Against the refusal to pass an ex pare ad interim order of injunction in a suit for recovery of money, this appeal has been preferred. The learned trial judge accepted the case of the plaintiffs that the plaintiffs have invested Rs. 30 lakhs and a fixed salary of Rs.25,000/- and 50% of total project profits and had entered into an agreement. The learned trial judge refused to pass an ex parte ad interim order of injunction restraining the defendants to realize a sum of Rs.40 lakhs approximately lying with the defendant no.7 in relation to a project, in which the plaintiffs claim to have invested. The defendant nos. 2 to 6 prima facie accepted Mr. Kushal Kumar Ghosh, who was a predecessor of the plaintiffs and was a civil engineer by profession as a financial advisor of defendant no.1 to 6 and also acknowledged the receipt of Rs. 30 lakhs.

The trial court recorded the flow of fund to the defendant no.1 to 6 and the circumstances in which such fund was given to the defendants, as a meticulous explanation in the plaint and the injunction application but refused to pass the order directing National Buildings Construction, defendant nos. 7, 8 and 9 to earmark and deposit a sum of Rs. 40 lakhs. It is clear case that the defendant nos. 2 to 6 committed fraud and disappeared after receiving the entire money. Criminal complaints have been lodged against the defendant nos. 2 to 6.

In our view the learned trial judge was wrong in not considering the fact that in the event the said amount is allowed to be withdrawn, any decree may be passed in favour of the plaintiffs would become otiose and nugatory and there would be no chance to recover the money. The plaintiffs have been able to make out a prima facie case, more than is required at the ad interim stage, as the learned trial judge has admitted in the order in which the facts have been beautifully summarized. However, the refusal to pass an ex parte ad interim order would not cause an irreparable injury to the plaintiffs, under the circumstances, is not proper exercise of discretion in the instant matter. On such consideration, we pass an ad interim order on which the respondent nos. 7, 8 and 9 in terms of prayer 'b' of the injunction application shall be restrained from releasing any amount to the defendant nos. 2 to 6, which reads as follows:

"Ad-Interim Order of Temporary Injunction in terms of Prayer (a) above directing the Defendant Nos.7, 8 & 9 not to release any amount lying with them payable to the Defendant Nos.1 to 6 towards Security Deposit, Earnest Money their Bills of works amount whatsoever or on any account lying with the defendant nos.7, 8 & 9 till the disposal of this application."

However, the amount is restricted to Rs.60 lakhs only. The ad interim order shall continue for a period of ten weeks or until disposal of the injunction application, whichever is earlier. The plaintiffs must comply with the provision under Order 39 Rule (a) and (b) within one week from date, failing which the ad interim order of injunction shall stand automatically vacated. In the event the injunction application could not be disposed of within a period of ten weeks from date, the trial court may extend such period for such period as the trial court may deem fit and proper after recording reasons for such extension. This order shall not prevent the opposite parties from applying for variation and/or modification and/or alteration of this order before the learned trial judge.

We are also of the view that if any prior notice of this application is served upon the respondent nos. 2 to 6, attempts may be made to withdraw the said fund in order to make the order passed by us does not become otiose and/or rendered nugatory.

The appeal and the application stand disposed of.

(Soumen Sen, J.)

(Subhasis Dasgupta, J.)