

27.04.2022
SL No.17
Court No.8
(gc)

FMA 78 of 2019

**Biplab Pal
Vs.
Pratip Ganguly & Ors.**

The appellant is not represented nor any accommodation is prayed for on behalf of the appellant.

The appeal is arising out of an order dated 20th July, 2018 by which the learned Trial Judge refused to pass ex-parte order of injunction against the defendant. We have perused the order under appeal. The Trial Court refused to pass ad-interim order in favour of the plaintiff/appellant as the appellant could not produce any rent receipt wherefrom it could be established that the appellant has been paying any rent to the defendant/respondent No.1 or that he is a tenant in the suit property. In absence of any prima facie case of tenancy being established, the Trial Court declined to pass an ex-parte order of injunction against the defendant. The Trial Court possibly wanted to ascertain whether the plaintiff was at all in possession or occupation of the suit property and, if so, in what capacity. The discretion exercised by the learned Trial Court in refusing the ad-interim ex-parte order of injunction cannot be said to be perverse.

Under such circumstances, we do not find any reason to interfere with the order dated 20th July, 2018. Moreover, it appears that the injunction application was fixed on 18th September, 2018. However, in the event the injunction application is pending, we request the learned Civil Judge (Senior Division) to dispose of the injunction application on merits as expeditiously as possible.

With the aforesaid observation, the appeal being FMA 78 of 2019 stands disposed of.

However, there shall be no order as to costs.

Urgent Photostat certified copy of this order, if applied for, be given to the parties on usual undertaking.

(Ajoy Kumar Mukherjee, J.)

(Soumen Sen, J.)