

16.02.2022
SL No.44
Court No.8
(gc)

**FMAT 27 of 2022
With
CAN 1 of 2022**

**Prabhu Poly Colour Ltd.
Vs.
Mahabir Polyfabs Pvt. Ltd.**

(Via Video Conference)

Mr. Sujit Banerjee,
Mr. Nilay Sengupta,
...for the Appellant.

In spite of service, the respondent is not represented.

The appeal is arising out of an order dated 11th January, 2022 by which the learned Judge, Vth Bench, City Civil Court refused to pass an ad-interim order of injunction in a suit for recovery of money only on the ground that there are long standing business relationships between the parties and it would not be proper to pass ad-interim order of injunction without hearing the defendant.

Mr. Nilay Sengupta, learned Counsel appearing on behalf of the appellant has drawn our attention to the letter dated 23rd December, 2020 issued on behalf of the defendant/respondent in reply to the demand notice dated 9th December, 2020 wherefrom it appears that the respondent had acknowledged Rs.9,00,000/- as due and payable instead of Rs.19,33,514/-. It is submitted that even such admitted sum was not paid.

In order to resolve the entire controversy, we direct Mr. Sengupta to serve a notice of the said application upon

the respondent. The respondent, however, has chosen not to appear. This conduct of the respondent can create a genuine apprehension in the mind of the appellant that the respondent may create third party interest over and in respect of properties to delay execution of the decree at least to the extent of Rs.9,00,000/- in view of the admission.

Under such circumstances, there shall be an order of injunction restraining the respondent from alienating and/or encumbering his assets and properties mentioned in the schedule to the injunction application till 20th March, 2022 since we have been informed that the Trial Court has fixed the injunction application on 16th March, 2022.

In view of the fact that the respondent has received a copy of the plaint and injunction in terms of our order dated 4th February, 2022, the respondent may file a written objection to the injunction petition within two weeks from the date of communication of this order. Reply thereto, if any, shall be filed within 10 days thereafter.

The learned Judge, Vth Bench, City Civil Court or the Court in-charge of the said Court shall consider the matter afresh without being influenced by our observation and disposed of the matter on merits in accordance with law, if not on that, any other date that may be convenient to the learned Bench within a reasonable time at the earliest.

With the aforesaid observation, the appeal being FMAT 27 of 2022 and the application being CAN 1 of 2022 stand disposed of.

However, there shall be no order as to costs.

All parties shall act on the server copies of this order duly downloaded from the official website of this Court.

(Ajoy Kumar Mukherjee, J.)

(Soumen Sen, J.)