

DL. July 26,
18. 2022

F.M.A. 1761 of 2015

M/s. Sumanta Susanta Overseas Pvt. Ltd.

Vs.

Sri Harendra Dubey & anr.

**Mr. Sumanta Biswas,
Mr. Bikash Shaw,
...for the appellant.**

The present appeal has arisen out of an order dated July 25, 2014 passed by the learned Judge, Sixth Bench, City Civil Court at Calcutta, in Title Suit No. 34803 of 2014, in connection with an application filed by the plaintiff/appellant under Order XXXIX Rules 1 and 2 read with Section 151 of the Code of Civil Procedure. The learned trial judge refused to pass any ex parte ad interim order of injunction on the ground of lack of urgency.

The matter is pending for almost eight years. The record shows that no attempt was made to move the application for temporary injunction. It further appears from the status report that direction for requisites was made on September 11, 2018 and thereafter from December 5, 2018 the matter is pending for service return and appearance. The matter is fixed for service return on December 12, 2022.

In the event, the learned trial judge is satisfied with regard to the service return and if there is no negligence on the part of the appellant in complying with the order of the court, it will be open to the trial court to dispose of the application for temporary injunction even ex parte if the defendants/respondents failed to

appear in spite of service of notice. In the event, the defendants appear on the returnable date, an opportunity should be given to the defendants to file their written objection dealing with the allegations leveled against them and an endeavour is to be made by the learned trial judge to dispose of the application for temporary injunction as expeditiously as possible without granting any unnecessary adjournment to either of the parties.

The defendants/respondents are restrained from making any unauthorised construction in respect of the suit property as also from transferring, alienating and/or subletting the suit property till disposal of the injunction application.

The appeal and the connected application for injunction filed under CAN 7671 OF 2014 are, therefore, disposed of even at the admission stage.

There will be no order as to costs.

(Soumen Sen, J.)

dns

(Siddhartha Roy Chowdhury, J.)