

28.03.2022  
SL No.15  
Court No.8  
(gc)

**FMAT 57 of 2022  
With  
CAN 1 of 2022**

**Kahm Industries Pvt. Ltd. & Anr.  
Vs.  
Punalur Paper Mills Ltd.**

**(Via Video Conference)**

Mr. Jishnu Saha, Sr. Adv.,  
Mr. Sakya Sen,  
Mr. S.R. Kakrania,  
Mr. T. Kakrania,  
Mr. K. Sharma,  
...for the Appellants.  
Mr. Probal Kumar Mukherjee, Sr. Adv.  
Mr. Souradipta Banerjee,  
Ms. Fatima Hassan,  
...for the Respondent.

The plaintiff filed a suit for declaration and injunction. In the suit, the plaintiff has prayed, *inter alia*, for a judgment that the sale deed executed in favour of the defendants on 5<sup>th</sup> April, 2003 is liable to be delivered up and cancelled. The plaintiff contended before the Trial Court that the plaintiff has a good prima facie case and relied upon certain orders passed under the land acquisition proceedings as well as the orders passed in Title Suit No.314 of 2021. The plaintiff was aware that there was an earlier proceeding between the parties with regard to the entitlement of the claim of compensation amount receivable in respect of acquisition of few floors in the suit property. The order passed in connection with the applications filed by the respective parties before the Trial Court was under

challenge. The hearing of the appeal was concluded, in fact, the hearing of the application for receiving the balance compensation amount was heard few days back and made C.A.V.

It was in such background, we feel that the plaintiff ought to have moved the said application upon notice to the defendants irrespective of the fact that whether there was any caveat as any decision in the said proceeding would adversely affect the interest of the defendant. We feel that there has been a suppression of material facts before the Trial Court and we are sure that if such facts are brought to the notice of the Trial Court, the learned Trial Judge might not have passed an ex parte ad-interim order in favour of the plaintiff. The deed of sale was executed in the year 2004. We feel that approaching the Court with half baked facts was a dishonest attempt on the part of the plaintiff to snatch an order when prima facie it appears that the defendants are the owners of the said property. In fact, we feel that on the basis of the pleadings and having regard to the fact that the sale deed of 2003 was challenged in the suit only recently, the Trial Court ought not to have exercised its discretion in favour of passing an ad-interim order inasmuch as it does not appear that the plaintiff was able to make out any urgency. There was no tearing hurry. Moreover, we do not find that the Trial Court has arrived at any prima

facie finding that the plaintiff was able to make out a strong prima facie case and the balance of convenience lies in favour of passing an ex parte ad-interim order in favour of the plaintiff.

On such consideration, we set aside the impugned order.

It appears that on 30<sup>th</sup> March, 2022 the matter has been fixed by the learned Trial Judge for consideration of the injunction application. The respondent shall file written objection in the injunction application by tomorrow.

The learned Trial Judge may consider the prayer for injunction on 30<sup>th</sup> March, 2022 in presence of the respondent.

We make it clear that the observation made by us shall not influence the learned Trial Judge in disposing of the injunction application on merits.

The learned Trial Judge while considering the injunction application shall take into consideration the application filed by the appellants under Order 7 Rule 11 of the Code of Civil Procedure.

With the aforesaid observation, the appeal being FMAT 57 of 2022 is allowed and disposed of.

In view of the disposal of the appeal, the application being CAN 1 of 2022 also stands 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.)**