

22 30.3.2022
Sc Ct. no.8

**FMAT 64 OF 2022
with
I.A. No. CAN 1 OF 2022**

Md. Kamil Khan
Vs.
Sanjay Garg & Ors.

Mr. M. P. Gupta
Mr. Ayan Mitra.

...For the Appellant/
Plaintiff

Mr. Mohinoor Rahaman
Mr. Sk. Abumus.

...For the Respondents/
Defendants

We have heard learned advocates for the appellant. The appeal is arising out of an order dated 8th February, 2022 by which the trial court refused to pass an ad interim order of injunction without giving the defendants/opposite parties an opportunity to show cause. The matter was fixed on 22nd March, 2022.

However, we have been informed by the learned counsel for the appellant that on that date, the defendants appeared and sought for time.

We feel that once the defendants appear, the Court should have decided the prayer for injunction in their presence on the adjourned date on the basis of the materials available on record so that no irreparable loss

or prejudice have caused to the appellant by reason of delayed disposal of the injunction application.

We have been informed by the learned counsel for the appellant that the trial court has fixed 29th April, 2022 for consideration of the injunction application.

Be that as it may, we are of the view that on the adjourned date if the defendants fail to file any objection to the injunction application, the trial Judge shall consider the prayer for interim order of injunction after hearing the defendants and if the trial Judge is of the view that the interest of the appellant is required to be protected, may pass such interim order as the learned trial Judge may deem fit and proper pending disposal of the injunction application on merit.

The appellant shall communicate this order to the respondents immediately by Speed Post along with Acknowledgement Due through the Registrar (L & O.M.).

A copy of this order shall also be brought to the attention of the learned Judge, VIIth Bench, City Civil Court at Calcutta by the appellant within a week from date.

We make it clear that while considering the prayer for injunction, the trial court shall not be influenced by its earlier order or by the observation made by us in this order and also by not interfering with the impugned order passed by the learned trial Judge at this stage.

The appeal and the application are disposed of.
However, there shall be no order as to costs.

Urgent Photostat certified copy of this order, if
applied for, be furnished expeditiously.

(Ajoy Kumar Mukherjee, J.)

(Soumen Sen, J.)