

16.
sg 11-04-2022

FMAT 101 of 2022
CAN 1 of 2022

Ct. 8

Gopali Sarkar & Anr.
Versus
Goutam Mondal & Ors.

Mr. Srijib Chakraborty, Adv.
Mr. Kushal Chatterjee, Adv.
Mr. I. Munshi, Adv.

...for the appellants

The appeal is arising out of an order passed by the learned Civil Judge (Senior Division) at Durgapur in connection with an application filed by the plaintiffs under Order XXXIX Rule 1 and 2 read with Section 151 of the Code of Civil Procedure.

The plaintiffs filed the said application in a suit for declaration, cancellation of instrument and permanent injunction. The learned Trial Judge although found that the plaintiffs were able to make out a prima facie case, refused to pass an ex parte ad interim order solely on the ground that there was not urgency. The learned Trial Judge failed to appreciate that once a prima facie case is made out, the Trial Court is required to find out the balance of convenience and irreparable loss that the plaintiffs are likely to suffer in the event the order of injunction is refused at the ad interim stage. The appellants claim that the Registered Power of Attorney executed in favour of Goutam Mondal and Smt. Jaba Mondal has been misused and the said Power of Attorney holders have acted in derogation of the said Power of Attorney in entering into the transaction with the parties who are closely related to them, namely, Jaba Mondal, the wife of Goutam Mondal, as one

of the purchasers and thereby they have manipulated the entire transaction and sold the property for a song. In the suit, amongst other, the plaintiffs have prayed for cancellation of the Power of Attorney and the impugned sale Deeds.

We agree with the learned Trial Judge that the plaintiffs were able to make out a strong prima facie case, we are also of the view that the plaintiff at the ad interim stage has made out an arguable case on merits. On such consideration, we set aside the order of the learned Trial Court.

There shall be an order of injunction restraining the respondent nos. 1 and 2 from acting on the basis of the Power of Attorney and restraining the respondent nos. 3 and 4 to create any third party interest and/or alienating the properties till 27th June, 2022.

We have been informed that the learned Trial Judge has fixed 27th June, 2022 for consideration of the injunction application in presence of the respondents. We request the learned Trial Judge to hear the said application on that date and if by some reason the application could not be disposed of on that date, consider extension of the ad interim order upon hearing the learned Counsel for the parties.

We direct the appellant to communicate a copy of this order along with the copies of the plaint and the injunction petition filed in Title Suit No. 40 of 2022 to the opposite parties within ten days from date. We record the submission made on behalf of the appellants that the requisites have been put in for service and appearance of the defendants.

With the above directions, the appeal and the application

are, accordingly, disposed of.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties upon compliance of all requisite formalities.

(Ajoy Kumar Mukherjee, J.)

(Soumen Sen, J.)