

08.09.2022
KC(2)

F.M.A. 803 of 2022
Jnanbhusan Saha and Anr.
-versus-
Muslam Sekh and Ors.
With
CAN 1 of 2022
With
CAN 3 of 2022

Mr. Aniruddha Chatterjee,
Mr. Mansoor Alam,
Ms. Sima Ghosh.....For the appellants.

Ms. Shila Sarkar,
Mr. Pinaki Dhole,
Mr. Debjit Bhattacharya.....For the respondents.

We understand the plight of the respondents/defendants who had acquired the subject property, invested a sizable sum of money in it and started construction which, from the pictures handed up to the court, appears to be large scale.

At that point of time, the appellants/plaintiffs instituted the suit claiming, inter alia, that the transfer of title of the subject property in favour of the respondents/defendants was invalid.

The question before the court is whether to continue or discharge the order of injunction now operating restraining the construction work. In a case like this, the balance of convenience is most important.

We assume that there is a substantial question to be tried.

Learned counsel for the respondents/defendants admits that the construction work contemplates building of a multi-storied building.

Now, if injunction is refused or vacated and Mr. Chatterjee's clients, the appellants/ plaintiffs ultimately succeed in getting the deed of transfer set aside, it would be really impossible for this court to give back to them the property as it was at the time of institution of the suit, inasmuch as, by that time a substantial part, if not the whole, of the multi-storied construction would be completed. On the other hand, if the appellants/ plaintiffs are not successful in the suit, it would be quite convenient for the respondents/defendants to continue with the construction.

In any event, the suit is to be disposed of as early as possible. Therefore, taking into account the prima facie case and the balance of convenience, we request the learned court below to dispose of the suit by February, 2023.

The existing order of injunction restraining the respondents/defendants from continuing with the construction will only continue till 15th March, 2023 or till the decree is passed by the learned court below, whichever is earlier and would abide by the decree or directions of the learned court below.

The appeal (F.M.A. 803 of 2022) and both the connected applications (CAN 1 of 2022 and CAN 3 of 2022) are disposed of by this order.

(I.P. MUKERJI, J.)

(BISWAROOP CHOWDHURY, J.)