

4.1.2022
SL No.40
Court No.8
(gc)

**FMA 1039 of 2021
With
CAN 1 of 2021**

**Sri Sumanta Ghosh
Vs.
Smt. Supriya Ghosh & Ors.**

(Via Video Conference)

Mr. Uday Shankar Bhattacharya,
Mr. Dipankar Mullick,
Mr. Mritunjay Saha,

....for the Appellant.

The respondents are not represented.

The affidavit-of-service filed by the appellant in Court today be kept with the record.

The affidavit-of-service filed on behalf of the appellant shows that the respondents have refused to accept service of notice. In view thereof, we are inclined to take up the appeal and the application together.

The claim in the suit is arising out of money lent and advanced. The contention of the appellant is that in view of the good relationship between the appellant and respondents, the appellant lent and advanced a sum of Rs.45,00,000/- to the predecessor of the defendants by bank transfer in order to enable them to use the said fund for the growth of their business. The original borrower alleged to have executed two undertakings on two separate non-judicial stamp papers by which Kumaresh Ghosh, since deceased, had acknowledged receipt of the said amount with an undertaking to repay the said loan to the plaintiff. The

plaintiff alleged that in spite of repeated requests and demands, the said amount was not repaid and, on the contrary, the defendants are trying to dispose of the suit property as mentioned in the Schedule B of the petition.

The learned Civil Judge, 1st Court, Baruipur refused to pass an ad interim ex parte order of injunction on the ground that the description of the property as stated or described in Schedule B of the petition is vague and there is nothing on record to show that the defendants are trying to dispose of and/or alienate and/or encumber the suit property to the others. The learned Civil Judge has also distinguished the decision of the Coordinate Bench in ***Santosh Promoters Pvt. Ltd. Vs. Intrasoft Technologies Ltd.*** reported in ***(2017) 1 CalHCN 189 (Cal)***. In ***Santosh Promoters*** (supra) in Paragraph 23, the power to grant temporary injunction to prevent a defendant from transferring his properties to defraud his creditors has been reiterated. In the instant case, having regard to the two undertakings acknowledging loan and failure to repay the said loan in spite of payments would create a prima facie presumption that the defendants are trying to avoid payment of the dues of the plaintiff for which we feel that the interest of the plaintiff is required to be protected.

Under such circumstances, there shall be an order of injunction restraining the defendants from alienating and/or encumbering and/or creating any third party interest in respect of the 'B' Schedule property for a period of 12 weeks

from date or until the matter is finally decided by the learned Trial Judge, whichever is earlier.

We request the learned Trial Judge to dispose of the injunction application as expeditiously as possible.

A copy of the plaint along with the injunction application shall be served upon the defendants within one week from date. The defendants shall be at liberty to file written objection to the injunction application within two weeks from the date of service. The plaintiff shall be at liberty to apply for early hearing of the injunction application after the pleadings are complete.

In view of the fact that this is an ex parte ad interim order and the defendants have refused to appear in the appeal, the learned Trial Judge shall be at liberty to decide the matter uninfluenced by any observation made by us in this order as expeditiously as possible. In the event for some unavoidable reasons the matter could not be disposed of within a period of 12 weeks from date, the learned Trial Judge shall be at liberty to pass such order as the learned Trial Judge may deem fit and proper.

With the aforesaid observation, the appeal being FMA 1039 of 2021 and the application being CAN 1 of 2021 stand disposed of.

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.)