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Ct-08

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FMAT 607 of 2021

with

I.A No. CAN 1 of 2021

CAN 2 of 2021

Ranjana Chakraborty nee Banerjee

Vs.

Sunil Kumar Ghosh & Ors.

Mr. Arnab Roy

Mr. Satyam Mukherjee

... For the Appellant

Re: CAN 1 of 2021 (Section 5)

In view of the order of the Hon'ble Supreme Court passed in Miscellaneous Application No. 665 of 2021 in SMW(C) No. 3 of 2020 on 23rd September, 2021 the appeal is treated as within time and there is no necessity to file application for condonation of delay and the appeal is treated as filed in time. The application for condonation of delay is redundant and the same is accordingly disposed of without, however, any order as to costs.

Now we take up the appeal for hearing.

The appeal is directed against an order dated 26th March, 2021 passed by the learned Civil Judge (Senior Division), 2nd Court, Barasat in connection with an application filed under Order 39 Rule 1 & 2 of the Code of Civil Procedure.

It is submitted by the learned counsel appearing for the appellant that in a suit for specific performance, it is the duty of the court to secure the interest of the plaintiff and in the event, the plaintiff is able to make out a strong prima facie case it is the duty of the court to protect the interest of the plaintiff whether the

agreement in question is an unregistered one and insufficiently stamped, which appear to be the only ground to pass any ex parte order of injunction. The order was passed by the learned trial judge on 26th March, 2021. Even if we accept the submission made on behalf of the plaintiff having regard to the case made out in the injunction petition, we are of the view that ex parte ad-interim order of injunction in the instant case was not desirable.

Learned counsel appearing for the appellant further submits that irrespective of document, being an unregistered agreement or insufficiently stamped, as a prima facie case is made out, the plaintiff is entitled to an order of injunction.

Having gone through the plaint and the injunction petition, we are of the opinion that this is not a fit case to pass ex parte ad-interim order of injunction. On that ground, we refuse to entertain the appeal.

We, therefore, remand the matter back to the trial court.

All points are left open before the trial court including if a strong prima facie case is made out, the trial court may look into the unregistered agreement or insufficiently stamped for the purpose of granting injunction and if may require, impounding the said instrument and send the same to the collector for assessment of the stamp duty by passing any such appropriate order, the trial court may deem fit and proper.

FMAT 607 of 2021 is thus disposed of. In view of the disposal of the appeal nothing remains to be decided in the injunction application being CAN 2 of 2021 and the same is accordingly disposed of.

All parties shall act on the server copy of this order duly downloaded from the official web site of this Court.

(Ajoy Kumar Mukherjee,J.)

(Soumen Sen, J.)