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12-04-2022

Ct. 8

FMAT 641 of 2021
CAN 1 of 2021

Soumen Biswas & Ors.
Versus
Israr Ahmed

Mr. Dhananjay Nayak, Adv.
...for the appellants

Mr. Aniruddha Chatterjee, Adv.
Mr. Jaydeep Biswas, Adv.
Mr. Soumyadeep Das, Adv.
...for the respondent

By consent of the parties, the appeal and the connected application are taken up together and disposed of by this common order.

The appellants being the defendants in the suit are aggrieved by the ad interim ex parte order passed on 1st September, 2021 in a suit for specific performance by which the plaintiff and the defendants were directed to maintain status quo over the suit property. The documents available on record would show that the interim order was last extended on 1st October, 2021. The interim order was also passed without any reason.

Be that as it may, having regard to the fact that the interim order was continuing since 1st September, 2021, we request the learned Trial Judge to dispose of the injunction application on merits at the earliest without being influenced by the averments of the ad interim ex parte order at this stage. In the event the interim order is required to be extended, the learned Trial Judge may do so by a reasoned order and only after hearing the appellants.

The learned Counsel for the appellants submits that the suit

may not be maintainable and an application under Order VII Rule 11 is likely to be filed.

At this stage no observation is required to be made with regard to maintainability of the suit as it is needless to mention that the learned Trial Court while extending the interim order or deciding the injunction application on merit shall also take into consideration any application filed under Order VII Rule 11 of the Code of Civil Procedure to ascertain if the suit is barred by law under the said provision.

The appeal being FMAT 641 of 2021 and the application being CAN 1 of 2021 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.)