

07. 02.02.2022
Ct. No.08
Tanmoy

F.M.A.T. 758 of 2017
With
IA No: C.A.N. 1 of 2017 (Old No: C.A.N. 6438 of 2017)
With
IA No: C.A.N. 2 of 2017 (Old No: C.A.N. 8958 of 2017)

Sajan Kumar Bhagat, HUF & Ors.
-Versus-
Sanjay Kumar Bhagat, HUF & Anr.

(Through Video Conference)

Mr. Saptansu Basu, Ld. Sr. Adv.,
Mr. Ayan Banerjee, Adv.,
Mr. Raja Adhikary, Adv.

...for the respondent no.1/defendant no.1.

In Re: IA No: C.A.N. 2 of 2017 (Old No: C.A.N. 8958 of 2017).

There is a delay of 43 days in preferring the appeal.

We have perused the petition for condonation of delay. We are satisfied with the explanations offered for not being able to file the Memorandum of appeal within the period of limitation.

On such consideration, the delay of 43 days in filing the appeal is condoned.

The application being IA No: C.A.N. 2 of 2017 (Old No: C.A.N. 8958 of 2017) in F.M.A.T. 758 of 2017 is disposed of.

**In Re: IA No: C.A.N. 1 of 2017 (Old No: C.A.N.
6438 of 2017)
With
F.M.A.T. 758 of 2017**

The appellants are not represented, nor any accommodation is prayed for on behalf of the appellants. The appellants are also not represented on the earlier occasions. In view of our earlier order dated January 5, 2022, we took up the appeal along with the connected applications.

Mr. Saptansu Basu, learned Senior Counsel, has appeared on behalf of the respondent no.1/defendant no.1. The appeal is arising out of an order dated April 24, 2017 passed in a suit for declaration and perpetual injunction. The said petition was rejected on the ground that there is a case and counter-case between the parties with regard to the execution of the family settlement and/or oral partition in respect of the plaintiff no.3, firm.

The learned trial Judge has taken into consideration the judgment of this Court in ***Meena Bibi @ Anwari Begum & Others Vs. Hilda-Glady-Sylus & Others***, reported in ***2006 (2) CHN 24***. In the said reported judgment it was held that a mini trial at the stage of *interlocutory* application is not desirable and the Court is required to come to a *prima facie* view that in view of the allegation of forgery by the defendants against the plaintiffs whereof a criminal proceeding was instituted and the learned Metropolitan Magistrate had

proceeded with the criminal complaint which was not desirable to pass an order of injunction in favour of the plaintiffs. The allegation of the defendant no.3 that the plaintiff opened a new account by forging the signature of the defendants and the said criminal act was a foundation of the complaint before the learned Metropolitan Magistrate. The learned Judge has, for the purpose of deciding the injunction petition, summarized the facts and refused to pass a temporary injunction.

We do not find any reason to interfere with the discretion passed by the learned Judge by disposing of the said injunction petition. We find from the impugned order that April 27, 2017 was fixed for framing of issues. Pursuant to our earlier order dated January 5, 2022, status report has been filed by the Judge-in-Charge, 6th Bench, City Civil Court, Calcutta, stating that the plaintiff no.1, on April 9, 2021, filed one petition under Order XXII, Rule 3 of the Code of Civil Procedure, 1908 and the said petition is fixed for hearing on February 23, 2022.

In view of the aforesaid, we direct the learned trial Judge to dispose of the said petition at the earliest and thereafter to dispose of the suit as expeditiously as possible preferably within a period of one year from the date of disposal of the said petition without granting

any adjournment to either of the parties unless it is unavoidable.

The views expressed by us in affirming the order of injunction shall not influence the learned trial Judge in deciding the suit on merits. The said views are only *prima facie* and not conclusive.

The appeal being F.M.A.T. 758 of 2017 and the connected injunction application being IA No: C.A.N. 1 of 2017 (Old No: C.A.N. 6438 of 2017) are disposed of.

Let urgent photostat certified copies of this order, if applied for, be supplied to learned Advocates for the parties upon compliance with all usual formalities.

(Ajoy Kumar Mukherjee, J.)

(Soumen Sen, J.)