

01.03.2022
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FMAT 709 of 2021
With
I.A. No.CAN 1 of 2022
With
I.A. No.CAN 2 of 2022

Anamika Lodha & Anr.
Vs.
Nandini Nopany & Ors.

Mr. Abhrajit Mitra, sr. adv.,
Mr. Jishnu Chowdhury,
Mr. Sarvapriyo Mukherjee,
Mr. Soumya Roy Chowdhury,
Mr. Biswajit Kumar,
Mr. Raja Baliyal ... for the appellants.

Mr. S. N. Mookherjee, sr. adv.,
Mr. Akash Bajaj,
Mr. Pratik Mukhopadhyay,
Ms. Vaibhavi Pandey ... for the respondent no.1.

Mr. Joy Saha, sr. adv. ,
Mr. Rajat Gupta,
Mr. Avishek Guha,
Mr. Yash Vardhan Deora ... for the APL Committee
(Majority Members)/ Intervenors.

Mr. Arinban Ray,
Mr. Rajarshi Dutta,
Mr. Sankarsan Sarkar,
Mr. S. Nigam .. for the respondent no.2.

Mr. Debanjan Mandal,
Mr. Sanjeev Kr. Trivedi,
Ms. Iram Hassan,
Mr. Sanket Sarangi,
Ms. Mahima Cholera .. for the respondent no.3.

Re: I.A. No.CAN 1 of 2022

This is an application for condonation of delay in filing the instant appeal.

We have heard the learned counsels for the parties and we are satisfied with the causes shown for belated presentation of the appeal.

Causes being sufficient, we condone the delay in filing the appeal.

I.A. No. CAN 1 of 2022 is thus allowed.

Re: FMAT 709 of 2021

This appeal by the plaintiff is directed against the order no.2 dated 3rd August, 2021 in Title Suit No.800 of 2021. By the said order, the Learned Judge, Vith Bench, City Civil Court at Calcutta declined to grant an ex parte temporary injunction, which was moved before the said Court. The Court further, while passing the impugned order, has observed that the office of the Administrator Pendente Lite (in short, 'APL') is not added as a necessary party to the suit and their presence is necessary for proper adjudication of the case. It further observed that the office of the APL is required to be added as necessary party.

Aggrieved by refusing to grant an ex parte temporary injunction and also by the observations to the effect that APL is required to be added as a necessary

party, and direction to implead the APL the appellants are before us.

As noted, the order impugned is dated 3rd August, 2021. The learned Trial Court had issued show cause notice to the respondents to explain as to why the application for temporary injunction should not be allowed among other things. In our considered view, if the application for temporary injunction is directed to be considered by the learned Trial Court, ends of justice would be met as substantial time has elapsed ever since the impugned order had been passed, i.e. on 3rd August, 2021.

The learned senior counsel appearing for the appellants submitted that the appellants would be agreeable to similar orders being passed as was passed in F.M.A. 533 of 2021 dated 16th December, 2021. In the said appeal also an identical order passed by the learned Trial Court was put to challenge and we had disposed of the appeal by directing the learned Trial Court to take up the application for temporary injunction and take a decision on merits after affording opportunity to all parties. While doing so, we made it clear, we had not expressed any opinion on the merits of the matter and it is for the learned Trial Court to take a decision on merits and in accordance with law.

Learned senior counsel appearing for the appellants submitted that the 4th respondent has resigned

and necessary application has been taken out and the same is pending before the learned Trial Court.

Let a decision be taken on the application in accordance with law.

Learned Advocate General appearing for the other respondents submitted that similar orders as passed in F.M.A. 533 of 2021 dated 16th December, 2021 can be passed as it protects the rights of the parties leaving it open to the learned Trial Court to take a decision on the application for temporary injunction.

The learned senior counsel appearing for the appellants submitted that the observation made by the learned Trial Court in the impugned order to the effect that APL is required to be added as a necessary party and also a positive direction to the said effect in the operative portion of the order needs to be eschewed as the appellants had no opportunity to put forth their contentions with regard to impleadment of proper and necessary parties.

Learned Advocate General appearing for the respondent no.2 submitted that the portion of the direction issued by the learned Trial Court is not appealable and such direction cannot be tested for its correctness in this appeal. Nevertheless, we find that there is a positive direction issued by the learned Trial Court to implead the office of the APL. All that we can observe is that we leave it open to the appellants

/plaintiffs to work out their remedies in accordance with law qua this observation and direction by the learned Trial Court with regard to impleadment of the office of APL.

The learned senior counsel appearing for the appellants submitted that in the event of the appellants availing other remedies, the period during which this appeal is pending before this Court, shall be excluded while computing the period of limitation in the proceedings, which the appellants may initiate.

In our considered view, issuing any positive direction in this regard may not be appropriate and we observe that whenever the appellants invokes the appropriate remedy available under law as against that portion of the ex parte impugned order holding that presence of office of APL is necessary for adjudication and the direction to implead the office of APL, such forum / Court shall exclude the period during which this appeal was filed before this Court till the date of receipt of the server copy of this order while computing limitation.

We direct the plaintiffs to serve the respondents with copies of all the relevant papers within three weeks from date and the respondents shall file their written objections within three weeks therefrom and reply, if any, to be filed within one week thereafter with advance copies being served on the respondents.

The service of documents and affidavits, etc. shall be on the learned Advocates, who had entered appearance for the parties.

We further make it clear that we have not expressed any opinion on the merits of the matter and it is for the learned Trial Court to take a decision on merits in accordance with law.

The appeal and the application being I.A. No. CAN 2 of 2022 are disposed of.

Urgent photostat certified copy of this order, if applied for, be furnished to the parties expeditiously upon compliance of all legal formalities.

(T. S. Sivagnanam, J.)

(Sabyasachi Bhattacharyya, J.)