

DL. January 5,
48. 2022

F.M.A.T. 740 of 2021

Wellman Wacoma Limited
Vs.
Federal Bank Limited & ors.

Ms. Lapita Banerjee,
Mr. Rudrajit Banerjee,
Mr. Avik Banerjee,
Mr. Binay Kumar Jain,
...for the appellant.

Ms. Aparasjita Rao,
...for the respondent no. 1.

Mr. Arijit Basu,
Mr. Surajit Sen,
...for the respondent no. 2.

Ms. Lapita Banerjee, learned advocate appearing on behalf of the appellant rightly points out that in the second page at first paragraph the phrase “as the HDFC bank account is a frozen account” has been inadvertently included. The said phrase stands deleted. Similarly, in the following paragraph, that is, second paragraph at page 2 of the said order in the third line the words “bank account” shall be replaced by the words “bank guarantee”.

The order dated December 10, 2021 is corrected accordingly.

Although the matter is appearing under the heading “Order XLI Rule 11”, by consent of the parties, we take up the appeal itself for hearing by treating the same as on day’s list upon dispensation of all formalities.

Ms, Aparajita Rao, learned advocate, appears on behalf of the respondent no. 1 accepts notice of appeal on behalf of the

respondent no. 1.

Mr. Arijit Basu, learned advocate, appears with his junior, Mr. Surajit Sen, learned advocate, on behalf of the respondent no. 2 accepts notice of appeal on behalf of the respondent no. 2.

The added respondent no. 3 is not represented. Service of notice of appeal and the connected application on the respondent no. 3 is dispensed with.

The learned advocate for the respondent no. 1 submits that although the period of bank guarantee has expired, but since the original bank guarantee was returned, the invocation of the same was made.

The learned advocate representing the respondent no. 2 submits that he has not yet received instruction with regard to revalidation of the bank guarantee.

Be that as it may, at the time of consideration of the ad interim order of injunction, the plaintiff/appellant was able to make out a prima facie case in favour of granting ad interim order of injunction. Moreover, the balance of convenience and inconvenience were also found to be in favour of the plaintiff/appellant at the ad interim stage.

At this stage, we are only concerned as to whether the learned trial judge was justified in refusing the ex parte ad interim order of injunction. As observed by us in our order dated December 10, 2021, the plaintiff/appellant, in our view, was able to make out a case in favour of granting an ex parte ad interim order of injunction.

Having considered the materials on record and the submissions made on behalf of the parties, we dispose of this appeal

by directing the defendants/respondents to file their written objection, if not already filed, to the application for temporary injunction within four weeks from date; reply thereto, if any, is to be filed within two weeks thereafter. Although we are inclined to grant shorter time, but in view of the submissions made on behalf of the respondent no. 2 that it would take some time to file written objection, we direct filing of written objections within four weeks from date. Upon completion of pleadings, the learned Judge, Seventh Bench, City Civil Court at Calcutta, shall make all endeavour to dispose of the application for temporary injunction as expeditiously as possible, preferably within three months from date of completion of pleadings upon observing all covid protocols.

The parties are at liberty to mention the matter before the learned trial judge soon after completion of the pleadings in order to enable the learned trial judge to dispose of the injunction matter within the time limit, as aforesaid.

The ad interim order of injunction granted by us on December 10, 2021 shall continue till disposal of the injunction application.

We make it clear that the learned trial judge shall dispose of the application for temporary injunction on merits without being influenced by any of the observations made by us in this order and the order dated December 10, 2021.

We further make it clear that all issues including maintainability of the suit are kept open to be considered by the learned trial judge.

In view of disposal of the appeal, the application for

injunction filed under CAN 1 of 2021 also stands disposed of.

There will be no order as to costs.

(Soumen Sen, J.)

dns

(Ajoy Kumar Mukherjee, J.)