

04 **06.09.**
2022
Ct. No. 37

Ab

IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
(Commercial Division).

FMAT (ARBAWARD) 45 of 2022
With
IA No. CAN 1 of 2022

Cognition Projects Pvt. Ltd. and another
Vs.
Damodar Valley Corporation and others.

Mr. Jaydip Kar,
Mr. Subhabrata Datta,
Mr. Aranya Saha.

... for the appellants.

Mr. Samrat Sen,
Ms. Manali Bose,
Mr. Swarajit Dey,
Mr. Subhadeep Basak.

... for the respondents.

It is a common phenomenon, which we experienced in the legal journey, that the moment the caveat is lodged, the prayer for interim order is not entertained and an order for exchange of affidavits is passed.

Neither Section 148A of the Code of Civil Procedure nor any provisions contained therein put any fetter on the part of the Court to consider the prayer for interim order even in a situation where the caveat is lodged. It is an ardent duty of the Court to take a decision, the moment the prayer for interim order is made irrespective of the fact that the caveat has been lodged provided an opportunity should be given to the caveator to protect his case.

There is no reflection in the orders impugned in the instant appeal that any such prayer was made before the Court or such prayer has been refused.

Mr. Jaydip Kar, learned Senior Advocate appearing on behalf of the appellants, submits that the prayer for interim order was made before the Commercial Court but the order does not reveal so and, therefore, it tantamount to refusal to pass an interim order.

It is no doubt true that the moment such prayer is made, it is imperative on the Court either to pass an interim order or to refuse the same by recording proper reasons. Even a silence thereupon may tantamount to refusal and, therefore, we do not find any difficulty in the maintainability of the appeal against such order.

Be that as it may, we have been informed that the trial court has fixed a date for hearing of the temporary injunction application on 21st September 2022.

Mr. Kar vociferously submits that his clients need immediate protection by way of an interim order and if anything is done, which may tantamount to altering the position, the relief claimed in the temporary injunction may be inappropriate if taken on the date so fixed.

As indicated above, there is no reflection in the order that such prayer was made and refused by the Court and, therefore, we are unable to comprehend whether it is a fit case where the interim protection is required to be passed. However, the justice would be sub-served if a liberty is granted to the appellants to move the Court below for interim order before the date already fixed. In the event such attempt is made, obviously upon giving notice to the other side and the prayer for interim order is renewed, the Court below shall consider the same as and when such prayer is made and will pass a reasoned order in accordance with law.

At this stage, the Counsels appearing for the respective parties submit that, in fact, they are appearing before the Court below and, therefore, there is

no difficulty if the date is fixed by this Court.

Mr. Kar submits that he will move the Court below on 8th September 2022 for an interim order and since Mr. Samrat Sen, learned Senior Advocate, is appearing on behalf of the respondents, no formal communication is required to be made in this regard.

The moment such prayer is made on the date as indicated above, the trial court will proceed to hear the prayer for interim order and pass an order permissible in law.

With these observations, the appeal and the connected application are disposed of.

(Harish Tandon, J.)

(Prasenjit Biswas, J.)