

12.12.2022
KC(6)

F.M.A.T. 459 of 2022
M/s. Baan Ganga Developer and Ors.
-versus-
Mrityunjoy Dey and Ors.
With
CAN 1 of 2022

Mr. Haradhan Banerjee,
Mr. Amitava Pain,
Mr. Partha Pratim Mukhopadhyay....For the appellants.

We admit the appeal.

We are in a position to dispose of it without
sending any notice to the respondents.

The appellants claim to be the developers. The
respondents/owners as plaintiffs have obtained an
order of injunction restraining the appellants/
defendants from proceeding with the construction
which is the subject matter of the development
agreement.

The initial interim order was passed on 11th
December, 2020. The application to vacate that interim
order under Order XXXIX Rule 4 of the Code of Civil
Procedure was filed on 25th March, 2021. The impugned
order was passed on that application on 29th
September, 2022, simply extending the interim order.

The Order XXXIX Rule 4 application is still
awaiting consideration of the learned court.

We are of the view that this application to vacate the interim order should be forthwith heard out by the learned court below upon hearing the parties, by a reasoned order.

We order accordingly.

We request the learned court below to hear out the said application to vacate the interim order along with the interim application within ten weeks of communication of this order. The application to vacate the interim order shall be taken up first. The learned court below shall, at the first instance, consider whether to stay the operation of the continuing interim order or to continue it till the disposal of the said applications.

The appeal (F.M.A.T. 459 of 2022) and the connected application (CAN 1 of 2022) are disposed of accordingly.

(I.P. MUKERJI, J.)

(BISWAROOP CHOWDHURY, J.)