IN THE HIGH COURT AT CALCUTTA

(CIRCUIT BENCH AT JALPAIGURI)

CIVIL APPELLATE JURISDICTION

(APPELLATE SIDE)

Present:

The Hon'ble Justice Subrata Talukdar

and

The Hon'ble Justice Krishna Rao

F.M.A.T. No. 14 of 2022

with

IA No. CAN 1 of 2022

Fine Brick Private Limited & Ors.

Vs.

Tirumala Projects Private Limited

For the Appellants	:	Mr. Sakti Nath Mukherjee, Sr. Advocate
		Mr. Ratnanko Banerji
		Mr. Milindo Paul
		Mr. Nirmalya Dasgupta
		Mr. Nabankur Paul
For the Respondent	:	Mr. Anindya Mitra, Sr. Advocate
		Mr. Arindm Banerjee
		Mr. Mrigendra Chaturvedi

Mr. Mayukh Maitra

Mr. Deborsi Dhar

Mr. Debasish Mukhopadhyay

Ms. Madhushree Dutta

Mr. Anirban Banerjee

Ms. Srija Basu

Heard on : 15.09.2022

Judgement on : 16.09.2022

Subrata Talukdar, J. :- The appellants, represented by Mr. Sakti Nath Mukherjee, Learned Senior Counsel, appearing with Mr. Ratnanko Banerji, Learned Counsel, have preferred this appeal challenging the Order dated 20th of August 2022 granting an *ad interim* injunction in favour of the respondent/ the plaintiff. The appellants, being the defendants in the suit filed by the plaintiff for declaration, cancellation of deed, permanent injunction and other consequential reliefs, stands injuncted by the Learned Trial Court from creating any third party interest in respect of the suit property as existing on the date of the Order, i.e. 20th of August 2022 and, such *ad interim* injunction was directed to continue till 20th September 2022.

The respondent/ the plaintiff is represented by Mr. Anindya Mitra, Learned Senior Counsel, appearing with Mr. Arindam Banerjee, Learned Counsel. The names of the other Learned instructing advocates and assisting

Learned Counsel are printed in the order of their appearance in the cause title above.

Mr. Mukherjee submits that the Learned Trial court failed to take notice of the law settled in *2020) 7 SCC 366, In Re: Dahiben Vs. Arvindbhai Kalyanji Bhanusali (Gajra) Dead***.** Mr. Mukherjee lays particular reference to *Paragraphs 29.8 and 29.9* of the aforestated judgement which reads as follows:

> *"**29.8.** In Vidyadhar v. Manikrao & Anr.14 this Court held that the words "price paid or promised or part paid and part promised" indicates that actual payment of the whole of the price at the time of the execution of the Sale Deed is not a sine qua non for completion of the sale. Even if the whole of the price is not paid, but the document is executed, and thereafter registered, the sale would be complete, and the title would pass on to the transferee under the transaction. The non-payment of a part of the sale price would not affect the validity of the sale. Once the title in the property has already passed, even if the balance sale consideration is not paid, the sale could not be invalidated on this ground. In order to constitute a "sale", the parties must intend to transfer the ownership of the property, on the agreement to pay the price either in praesenti, or in future. The intention is to be gathered from the recitals of the sale deed, the conduct of the parties, and the evidence on record.*
>
> ***29.9.** In view of the law laid down by this Court, even if the averments of the Plaintiffs are taken to be true, that the entire sale consideration had not in fact been paid, it could not be a ground for cancellation of the Sale Deed. The Plaintiffs may have other remedies in law for recovery of the balance consideration, but could not be granted the relief of cancellation of the registered Sale Deed. We find that the suit filed by the Plaintiffs is vexatious, meritless, and does not disclose a right to sue. The plaint is liable to be rejected under Order VII Rule 11 (a)"*

Mr. Mukherjee submits that the law has been declared by the Hon'ble Apex Court that even if the averment of the plaintiff is taken to be correct that the entire sale consideration had not been paid, such averment cannot be a ground for cancellation of the sale deed. The law further lays down that the remedy of the plaintiff lies in an action for recovery of the balance consideration.

Apropos such submission, Mr. Mukherjee points out that the Learned Trial Court failed to appreciate the legal provision as enunciated in *In Re: Dahiben (supra)* and even assuming that the case of the respondent / the plaintiff is true that the balance consideration amount has not been paid by the defendants to the plaintiff, such could not be a ground for injuncting the defendants from enjoying their right, title and interest over the suit property.

Mr. Mukherjee next argues that the *Proviso* to Order 39 Rule 3 of the Code of Civil Procedure (CPC) enjoins the Learned Trial Court to record reasons for passing an *ex parte ad interim* injunction. It is the case of the appellants that the Order impugned dated the 20th August 2022 fails to provide reasons for granting the *ad interim* injunction and hence, is liable to be set aside. In this connection, Mr. Mukherjee relies upon *Paragraph 38* of *1994) 4 SCC 225*, *In Re: Morgan Stanley Mutual Fund Vs. Kartick Das with another.*

Referring to *Paragraph 10* of the application for stay connected to this appeal, being CAN 1 of 2022, Learned Senior Counsel submits that out of the total consideration money of Rs. 7, 34, 16,000/- to be paid to the respondent/ the plaintiff under the Deed of Conveyance entered into by and between the parties, a total of Rs. 95,00,000/- has admittedly been paid. It is submitted that the balance consideration money has been paid to the plaintiff through cheques and transfer by RTGS. It is the stand of the appellants that TDS at the rate of 0.75 percent amounting to Rs. 5,50,620/- has been already deducted as tax from the books of the appellants.

Mr. Mukherjee submits that in any event, assuming but not admitting that the payment of the total consideration money is yet to be received by the respondent/ the plaintiff, in view of *Paragraph 29.8* of *In Re: Dahiben (supra)* the non-receipt of the balance consideration money cannot be applied in law to injunct the appellants/ the defendants from exercising their right, title and interest over the suit property.

Per contra, Mr. Mitra, Learned Senior Counsel appearing for the respondent/ the plaintiff, submits that it is incorrect to argue that the impugned order dated 20th August 2022 does not contain reasons for grant of *ad interim* injunction. Mr. Mitra points out that such reasons are reflected from the order itself and read as follows:

> *"The plaintiffs have also prayed for an ad interim relief.*
>
> *No caveat is pending as per report of the office.*
>
> *The matter is taken up for hearing accordingly.*
>
> *Perused the petition, the documents plaint and all other materials on record.*
>
> *Considered.*
>
> *This is a suit for declaration, cancellation of deed , permanent injunction and other consequential relief. Plaintiffs case, in brief is that he has not received the total consideration amount in respect of the suit land for which a registered deed of conveyance was*

executed by the plaintiff. It was mutual agreed that entire amount will be paid but only small part of it was paid and now on the basis of such deed, executed on good faith and at the request of the defendant no. 1, the defendants in collusion with each other are trying to deal with the said property without having any right, title and interest and trying to invade the plaintiffs right by creating disturbance.

Hence this suit.

Having heard Ld. Advocate for the petitioner and on going through the materials on record, I find a prima facie case and considering the balance of convenience and inconvenience and the principal of irreparable loss as well as urgency, I am inclined to allow this petition to the following extent"

Mr. Mitra submits that at the time of passing the *ad interim* order of injunction, the only obligation imposed upon the Learned Trial Court is to state the requirement of granting the *ad interim ex parte* injunction considering the urgency claimed by the plaintiff/ the respondent. In support of his arguments Mr. Mitra relies upon the authority of *2000) 7 SCC 695*, *In Re: A. Venkatasubbiah Naidu vs. S. Chellappan and Others* at *Paragraphs 14 and 15* which read as follows:

*"**14.** Learned Senior Counsel for the respondents then contended that an order granting injunction without complying with the requisites envisaged in Rule 3 of Order 39 be void. Rule 3 reads thus: The Court shall in cases, except where it appears that the object of granting the injunction would be defeated by the delay, before granting an injunction direct notice of the application for the same to be given to the opposite party:*

[Provided that, where it is proposed to grant an injunction without giving notice of the application to the opposite-party, the Court shall record the reasons for its opinion that the object of granting the injunction would be defeated by delay, and require the applicant

(a) to deliver to the opposite-party, or to send to him by registered post, immediately after the order granting the injunction has been made, a copy of the application for injunction together with (i) a copy of the affidavit filed in support of the application; (ii) a copy of the plaint; and (iii) copies of documents on which the applicant relies, and

(b) to file, on the day on which such injunction is granted or on the day immediately following that day, an affidavit stating that the copies aforesaid have been so delivered or sent.

(i) a copy of the affidavit filed in support of the application; (ii) a copy of the plaint; and (iii) copies of documents on which the applicant relies, and

(b) to file, on the day on which such injunction is granted or on the day immediately following that day, an affidavit stating that the copies aforesaid have been so delivered or sent.

***15.** What would be the position if a court which passed the order granting interim ex parte injunction did not record reasons thereof or did not require the applicant to perform the duties enumerated in clauses (a) & (b) of Rule 3 of Order 39. In our view such an Order can be deemed to contain such requirements at least by implication even if they are not stated in so many words. But if a party, in whose favour an order was passed ex parte, fails to comply with the duties which he has to perform as required by the proviso quoted above, he must take the risk. Non-compliance with such requisites on his part cannot be allowed to go without any consequence and to enable him to have only the advantage of it. The consequence of the party (who secured the order) for not complying with the duties he is required to perform is that he cannot be allowed to take advantage of such order if the order is not obeyed by the other party. A disobedient beneficiary of an order cannot be heard to complain against any disobedience alleged against another party."*

Mr. Mitra, on the strength of the aforesaid authority, submits that the Learned Trial Court complied with the requirement of Order 39 Rule 3 by providing reasons for the urgent grant of *ad interim* injunction restraining the defendants from creating third party interest in the suit property. It is the further submission of Learned Senior Counsel for the respondent/ the plaintiff that the urgency of creating a restraint on the plaintiff from creating third party interest on the suit property is visible from *Paragraph 30* of the present application being CAN 1 of 2022 where the appellants/ the defendants have stated as follows:

> *"**30.** It is further relevant to mention here that out of the aforesaid 5.32 acres approximately the appellant No.1, asserting its ownership in respect of the property has already been sold and transferred a land measuring approx. 70 decimal in favour of Mr. Ghanshyam Das Fulchand Bansal under Deed of Conveyance dated January 29, 2022 as mentioned in the said deed. The Petitioner states that after the deed of conveyance was registered the Petitioner has also taken steps on the basis of the registration of deed of conveyance and already dealt with the property and has sold a part of the premises to a third party. The petitioner has taken steps on the basis of the registration of deed of conveyance. A copy of the Deed of Conveyance dated January 29, 2022 is annexed hereto and marked with Letter- 'E' "*

It is the further submission of Learned Senior Counsel for the respondent/ the plaintiff that the appellants/ the defendants have been unable to provide any particulars by way of cheque numbers or RTGS details or bank account disclosing the payment of the balance consideration money in favour of the respondent/ the plaintiff. Again referring to *Paragraph 10* of the present application being CAN 1 of 2022, Mr. Mitra submits that there is only a bald averment that TDS of a certain amount has been deducted without giving particulars of any cheques, RTGS details or the bank account particulars from which such TDS is claimed to have been deducted. Mr. Mitra also submits that the *ad interim* injunction has been granted as per the statutory provisions governing Order 39 Rule 3 for the prescribed period and the next date is fixed on the 20th of September 2022. Accordingly, the appellants/ the defendants should be put to full disclosure of all material facts before the Learned Trial Court to enable a contested hearing of the injunction application.

Heard.

Considered the materials placed.

The appeal stands admitted.

Next, coming on the merits of the legality of the *ad interim* injunction passed by the Learned Trial Court, this Court is of the view that the Order impugned dated 20th August, 2022 does not fall foul of Order 39 Rule 3 of the CPC.

In the opinion of this Court the Learned Trial Court has recorded sufficient reasons to support the object of granting the *ad interim* injunction which otherwise would be defeated by delay. In this context this Court refers to the averments at *Paragraph 30* of CAN 1 of 2022 (*supra*) where the appellants/ the defendants have admitted creation of third party interest in the suit property.

To the further mind of this Court, the requirement of giving reasons by the Learned Trial Court follows the ratio propounded in *2000 7) SCC 695, In*

Re: A. Venkatasubbiah Naidu vs. Chellappan and others at *Paragraphs 14 and 15 (supra)* as relied upon by the respondent/ the plaintiff. It cannot be disputed that the order impugned dated 20th August 2022 has taken judicial notice of the urgency in preserving the suit property from creation of third party interest and hence preserved the same pending further consideration.

This Court is of the further considered view that *Paragraphs 29.8 and 29.9* of *In Re: Dahiben (supra)* relate to a consideration of the right of the parties to sue for title and, the challenge in this appeal which, in the facts of this case, can be an issue in the trial, is limited only to the validity of the Order impugned dated 20th of August 2022 which, in the light of the discussion above, stands at this stage decided against the appellants.

Accordingly, this Court finds no reason to interfere with the order impugned No. 101 dated 20th August 2022 passed in Title Suit No. 82 of 2022 by the Learned Civil Court (Senior Division), Siliguri. It is made clear that the discussion in this order is limited to the consideration of the sustainability of the *ad interim* injunction and the Learned Trial Court shall be free to consider the subsequent steps taken in the injunction proceedings and the suit by the parties, as advised, independently on merits.

Parties shall be accordingly at liberty to take steps and contest the injunction hearing before the Learned Trial Court.

F.M.A.T. No.14 of 2022 with **IA No. CAN 1 of 2022** stand thus **disposed of**.

Parties shall be entitled to act on the basis of a server copy of the Judgment and Order placed on the official website of the Court.

Urgent Xerox certified photocopies of this Judgment, if applied for, be given to the parties upon compliance of the requisite formalities.

I agree.

(Krishna Rao, J.) **(Subrata Talukdar, J.)**

Later

Mr. Nirmalya Dasgupta, Learned Counsel appearing for the appellants, prays for stay of this order.

Prayer for stay is considered and refused.

I agree.

(Krishna Rao, J.) **(Subrata Talukdar, J.)**