

S/L 112  
07.11.2022  
Court No.1  
*Sourav/  
Suvayan*

**IN THE HIGHCOUR AT CALCUTTA  
CIRCUIT BENCH AT JALPAIGURI  
CIVIL APPELLATE JURISDICTION**

**FMAT 15 of 2022  
With  
IA No: CAN 1 of 2022**

**Sri Prosanta Sarkar & Anr.  
Vs.  
Smt. Sabita Das (Nandi) & Ors.**

*Mr. Rahul Kedia  
Mr. Ajay Singhal  
Mr. Bijan Ghosh*

*... for the appellants.*

*Mr. Rajat Das  
Ms. Anumita Lahiri  
Ms. Riya Das*

*...for the respondents.*

Heard Mr. Rahul Kedia, learned Counsel appearing on behalf of the defendant nos. 1 and 2/appellants and Mr. Rajat Das, learned Counsel appearing on behalf of the respondents.

This appeal is directed against the order dated 4/5.8.2022 extending the order of ad interim injunction by the learned court below. It is not disputed that ad interim injunction has been passed against the defendants/appellants by the appropriate court. On appearance by the defendants/appellants, a petition to recall/vacate that order has been filed on 04.05.2022. The suit is adjourned to 21.11.2022.

It is common law that ad interim injunction is passed in absence of the defendants and on appearance the defendants have right to file a petition either to vary or recall/vacate that order. On proper hearing of the parties, the ad interim injunction so passed may be made absolute or it may be vacated against all the defendants or in respect of some of the defendants.

It is alleged by the learned Counsel for the appellants that though proper application for recalling/vacating the order of ad interim injunction has been filed since 04.05.2022, no action has yet been taken by learned court below on the petition. It is further submitted by learned Counsel for the appellants that some documents which are in possession of the plaintiffs are not being supplied to the defendants/appellants to enable them to file proper petition.

On consideration of the aforesaid submission, we are of the view that learned court below should dispose of the petition dated 04.05.2022 as expeditiously as possible preferably within a period of two months from the date of receipt of this order. If any document from the plaintiff are required by the defendants/appellants, appropriate petition to that effect shall be filed before the court below and

the petition so filed shall be decided on its own merit.

In view of the pendency of petition dated 04.05.2022 before the trial Court, with the aforesaid observations, this appeal being **FMAT 15 of 2022** along with **CAN 1 of 2022** is disposed of as premature.

**(Chitta Ranjan Dash, J.)**

**(Kausik Chanda, J.)**