

FMA 130 of 2023

with

IA NO. CAN 1 of 2023

(Shree Hanuman Properties Ltd. Vs.
Manoj Shaw & Ors.)

Mr. Dhiraj Trivedi

Mr. Bikash Kumar Singh

Mr. Sunil Gupta

Ms. Swapna Jha

... For the appellant.

This appeal is directed against the order no. 2 dated 24th January, 2023 passed by the learned Judge-in-charge, 6th Bench, City Civil Court at Calcutta in Title Suit No. 138 of 2023 whereby the learned Court below refused to pass ex parte order of injunction.

Sans unnecessary details, facts leading to filing this instant appeal are that the plaintiff/appellant claiming itself to be the owner of the suit property instituted a suit for declaration and permanent injunction before the learned court below and along with the plaint, one application with a prayer for interim order of injunction was also preferred.

The case made out in the plaint and application for interim order is that the premises has a small common passage and thereafter a staircase to the premises. The defendants and some outsiders park their vehicles on the common passage as well as on the

landings of the staircase causing serious problem to the egress and ingress of the plaintiff and other tenants to the premises. On various occasions, the defendants stack their goods and effects on the passage and in the later part of evening, the defendants indulge in drinking alcohol in the common areas of the premises and hence, in order to avoid such sort of illegal activities of the defendants and their associates, plaintiff decided to keep the main gate of the premises closed from 10.30 p.m. to 6 a.m. but the defendants and their associates have been creating obstruction in closing the main gate and they have been threatening the security guard of the premises with dire consequences in case, the main gate of the premises is kept closed from 10.30 p.m. to 6 a.m.

Mr. Trivedi, learned advocate appearing for the appellant submits that the prayer of the appellant was innocuous. He contends that the plaintiff just wants to keep the main gate of the premises closed from 10.30 p.m. to 6 a.m. in order to avoid the illegal activities of the defendants and their associates and considering the legal injuries which the plaintiff has been suffering day by day, the learned Court below should have granted the ex parte interim order as prayed for.

Order impugned postulates that the learned Court below refused to grant ex parte order of injunction on the premise that opportunity of being heard was required to be afforded to the defendants

particularly when two defendants are the tenants of the same premises.

Contour of the controversy centered around the present appeal is whether the learned Court fell in error in not granting ex parte order of injunction.

For better understanding of the issue involved in the present appeal, the Rule 3 of Or. 39 of the Code of Civil Procedure, 1908, which deals with the procedure to be followed by the Court once the order of temporary injunction is prayed for under Rules 1 and 2 of Or. 39 of the Code, is extracted hereunder:

‘3. Before granting injunction, Court to direct notice to opposite party- The Court shall in all 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.'

The words '*in all cases*' indicate that whenever application for interim order of injunction is filed, notice to the opposite party or parties is a must. But in an exceptional case, if the party applying for injunction makes out a case of extreme urgency and the delay on account of time consumed in service of notice would have the effect of defeating the very object of granting the order of temporary injunction, Court can grant an ex parte order of temporary injunction. Legislative fiat is that the Court shall record reasons for its opinion that object of granting injunction would be defeated by delay.

It is no longer *res integra* that ex parte order of injunction should be granted only in exceptional circumstances. To grant ex parte order of injunction, Court shall consider the general principles like prima facie case, balance of convenience and irreparable loss

and injury and in addition thereto, the Court shall also consider- i) whether the refusal of ex-parte injunction would involve greater injustice than the grant of it would involve, ii) at which time the plaintiff first had notice of the act complained so that the making of improper order against a party in his absence is prevented, iii) whether the plaintiff had acquiesced for sometime and in such circumstances, the Court will not grant ex parte injunction. (See, the case of *Morgan Stanley Mutual Fund –vs- Kartick Das* reported in (1994) 4 SCC 225).

Learned Court below observed that the plaintiff itself pleaded that by virtue of decree, it got possession of four rooms of the premises, it sought for intervention of the local police and an application under section 144(2) of the Code had been filed and status of the defendants so far as the premises is concerned has not been disclosed and then the Court below arrived at the conclusion that opportunity of being heard must be afforded to defendants before passing an order of injunction.

Having considered the above facts and circumstances, we are of the view that plaintiff/appellant has not been able to make out any case leading us to infer that plaintiff/appellant was entitled to ex parte order of injunction. We have not

found any infirmity in the approach and decision of the learned Court below.

For the reasons discussed above, the appeal and the connected application are dismissed.

There shall, however, be no order as to costs.

The learned trial Judge shall dispose of the injunction petition as expeditiously as possible without being influenced by any of the observations made in this order.

All parties shall act on the server copies of this order duly downloaded from the official *website* of this Court.

(Partha Sarathi Chatterjee, J.) (Tapabrata Chakraborty, J.)