

15 08.06.23

Ct. No. 04

akd

F.M.A.T. 61 of 2023
CAN 1 of 2023

Goodpoint Realtors Pvt. Ltd.
Vs.
Pratap Das & Anr.

Mr. Mrityunjay Saha.

... for the appellant.

Mr. Rwitendra Banerjee,

Mr. Prasenjit Debnath.

... for the respondent no.1.

Mr. Nirmalya Dasgupta,

Mr. R. L. Mitra.

... for the respondent no. 2.

The instant appeal arises from an order dated 19th January, 2023 passed by the learned Civil Judge (Senior Division), Sealdah, South 24-Parganas in Title Suit No. 19 of 2023, by which the prayer for ex parte ad interim order of injunction was refused.

The plaintiff/appellant filed a suit for declaration, specific performance of an agreement and other consequential reliefs alleging that pursuant to the Memorandum of Understanding/agreement for sale the entire consideration amount of Rs.40,00,000/- was paid. The Trial Court refused to pass an ex parte ad interim order of injunction, as the plaintiff did not file any document relating the payment of the said consideration money.

It was pointed out to us on the last occasion that such documents were filed before the Court through Firisti although not annexed with the injunction application and, therefore, the finding of the Trial Court in this regard is erroneous. However, we directed the service to be effected upon the respondents and pursuant to the same the respondents are before us.

The ex parte ad interim order of injunction was refused as far back as on 19th January, 2023 and, therefore, we feel that at this stage it would not be

proper for us to interfere with the said order, more particularly when the respondents have appeared in the matter.

We, therefore, find that justice would be subserved if the application for injunction is decided on priority basis and direct the respondents being the defendants in the suit to file affidavit-in-opposition to the application for injunction within two weeks from date before the Trial Court and the reply thereto, if there be any, be filed within one week thereafter.

The learned Judge in the Trial Court is directed to fix the date for hearing of the temporary injunction application immediately upon expiration of the period for exchange of affidavit; if necessary, by preponing the date and endeavour shall be made to dispose of the temporary injunction application within two weeks therefrom by recording proper reasons in accordance with law.

Since we decline to interfere with the impugned order refusing to pass an ex parte ad interim order, the Trial Court shall not be swayed by such fact and decide the application for temporary injunction application on its merit, as the consideration at the time of passing an ex parte ad interim order of injunction is different than the consideration at the time of disposing of an application for temporary injunction.

With the above observations, the appeal and application are disposed of.

(Harish Tandon, J.)

(Prasenjit Biswas, J.)

