

17.04.2023
ASR 11.

FMA 176 of 2023
With
CAN 1 of 2023

Vikram Ghosh
Versus
Shyamoli Mondal

Mr. Sounak Bhattacharjee
Mr. Sounak Mondal
Mr. Anirban Saha Ray

.....for the appellant

Mr. Balilal Sahoo
Mrs. Peu Bhattacharya

.....for the respondent

We formally admit the appeal.

We are in a position to dispose of this appeal dispensing with all formalities.

The suit in the learned court below is by an intending purchaser for specific performance of an agreement for sale of an immovable property.

In the interim application the appellant/plaintiff asked for an ex parte order restraining the respondent from dealing with the property from creating third party interest or an order forbidding him from changing the nature and character of the property.

The learned judge refused to pass such an order stating that there was no occasion to do so without hearing the respondent/defendant.

On the prima facie case narrated in the order that is to say the execution of an agreement to sell between the parties, payment of Rs. 7, 50,000/- (rupees seven lakhs fifty thousand) as part consideration out of the full consideration of Rs. 1,20,00,000/- (rupees one crore twenty lakhs) by the appellant/plaintiff to purchase the property and his readiness and willingness to complete the transaction atleast a limited order of injunction as prayed for by the appellant/plaintiff ought to have been passed.

We accordingly direct that till the disposal of the interim application or until further order whichever is earlier the respondent/defendant be restrained by an order of injunction from selling otherwise transferring, dealing with or creating any encumbrance or third party interest in the property or parting with its possession.

The interim application be heard out as early as possible preferably within three months from the date of communication of this order.

All points are kept open before the learned court below.

Our observations are to be taken us prima facie and tentative.

The appeal and the connected application are disposed of.

The impugned judgement and order are set aside.

(I. P. Mukerji,J.)

(Biswaroop Chowdhury,J)