

31 **30.08.
2023**

Ct. No. 04

Ab

**FMAT 152 of 2023
IA No. CAN 1 of 2023**

**Deb Kumar Thakur
Vs.
Smt. Chayarani Dey and others.**

**Mr. Tapan Kumar Dey,
Mr. Rakesh Roy.**

... for the appellant.

**Mr. Somnath Ghoshal,
Mr. Amar Krishna Saha,
Mr. Shibu Sikdar,
Mr. Rahul Nag,
Mr. Subha Senapati.**

... for the respondent no. 2.

Let the affidavit of service filed in Court today be kept on record.

It appears that the service has been effected upon the respondents, but the respondent no. 2 has entered appearance in the instant appeal.

The instant appeal arises from an order declining to pass an *ex parte* ad interim order of injunction.

Learned Advocate for the appellant submits that his client has filed a suit for declaration that he is a licensee under the respondent no. 1 and, therefore, has a right to reside therein and further entitled to shifting accommodation during the construction by the developer. The further consequential relief is also sought for.

An application for temporary injunction is taken out therein seeking an order of restrain against the defendants/respondents from creating any third party interest and also to stop the illegal construction in respect of the suit premises.

The court though observed that in a suit for recovery of possession, there is no urgency to pass an order of injunction, which cannot be said to be an absolute proposition of law, yet we feel that the moment

the party has entered appearance and the nature of the interim order claimed therein, it may not be appropriate without affording an opportunity of hearing to them.

The defendant/respondent no. 2 has entered appearance, who is alleged to be a developer, and submits that they have acquired the absolute right, title and interest in respect of the subject property and the claim of the plaintiff/appellant is not tenable.

Be that as it may, since the instant appeal arose from refusal to pass an ex parte ad interim order of injunction and it appears that the defendant/respondent no. 2 is the main contesting party, we, therefore, feel that if the hearing of the application for temporary injunction is expedited, it would sub-serve the justice.

Accordingly, the defendant/respondent no. 2 is directed to file affidavit-in-opposition to the application for temporary injunction filed before the trial court within two weeks from date; reply thereto, if any, shall be filed within a week thereafter and the trial court is requested to dispose of the application for temporary injunction within two weeks from the date of expiration of period for exchange of affidavits after affording an opportunity of hearing to the respective parties or their learned Advocates by recording proper reasons.

With these observations, the instant appeal is disposed of.

In view of the disposal of the appeal itself, the connected application being CAN 1 of 2023 has become infructuous and the same is also disposed of.

(Harish Tandon, J.)

(Prasenjit Biswas, J.)

