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2023

Ct. No. 04

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FMA 720 of 2022
IA No. CAN 1 of 2022
IA No. CAN 2 of 2022
IA No. CAN 3 of 2022

Mohit Jhunjunwala and another
Vs.
Ranjit & Co. and another.

Mr. Siddhartha Banerjee,
Ms. Soni Ojha,
Ms. Sonia Nandy,
Mr. Soumyajit Majumdar.

... for the appellants.

Mr. Manjit Singh,
Mr. Gaganjyot Singh,
Mr. Biswajit Mal.

... for the respondent no. 1.

Re: FMAT 538 of 2023

Though the instant appeal is not listed today, yet we take the same on record as the final order passed in connection with FMA 720 of 2022 would dispose of both the appeals.

Re: CAN 1 of 2022 filed under FMA 720 of 2022

The instant appeal has been preferred beyond the period of limitation provided therefor.

The learned Advocate for the appellants submits that the reasons disclosed in paragraph 6 to 9 of the instant application were beyond the control of the appellants, which occasioned the delay in preferring the instant appeal.

After perusing the averments made in the instant application and after hearing the submission of the learned Advocate for the appellants, we are satisfied that the appellants were prevented by sufficient cause in not preferring the instant appeal within the period of limitation provided therefor. The application for condonation of delay being CAN. 1 of 2022 is, thus,

allowed. The delay in preferring the appeal is hereby condoned.

The office is directed to formally register the appeal.

The appeal being FMA 720 of 2022 is filed against an ex parte ad interim order of injunction passed by the trial court restraining the defendants/appellants from ousting the plaintiff/respondent from the suit premises without due process of law.

The plaintiff/respondent filed a suit for specific performance of an oral agreement, which, according to the defendants/appellants, is alleged to have taken place two decades before the institution of the suit.

It is averred in the said plaint that the plaintiff/respondent was inducted as tenant in respect of the suit premises and is occupying since more than two decades. An oral agreement was entered into with the original owner to alienate, transfer and sale the said suit premises to the plaintiff/respondent and a considerable amount towards the consideration has also been paid.

It is alleged that taking advantage of the decree for specific performance of an agreement for sale in respect of the suit premises, the defendants/appellants are taking steps to oust the plaintiff/respondent from the suit premises and, therefore, the protection must be extended to the plaintiff/respondent.

Considering the aforesaid facts having made out the prima facie case, the court passed an ex parte ad interim order of injunction. The appeal is against the said ex parte ad interim order of injunction as well as the last extension granted by the trial court.

We are conscious of the proposition of law that the scope of such an appeal is very limited as the court decides the appeal on the basis of the averments made in the plaint as well as the application for temporary injunction and the documents annexed thereto and normally do not venture to enter into the defence set up by the defendants/appellants before the appellate court.

Considering the nature of the impugned order and the fact that the plaintiff/respondent has allegedly pleaded in the plaint as well as the application for temporary injunction that it is a tenant in respect of the property and also a bona fide proposed purchaser on the basis of the oral agreement, we feel that it would be proper that the application for temporary injunction should be decided upon giving an opportunity should the defendants/appellants to disclose their defence in this regard.

Since the defendants/appellants are not a party to the suit and filed the instant appeal seeking leave to prefer the same as the order impugned vitally affected their right, we hereby grant such leave to the defendants/appellants to prefer the appeal taking into consideration that a decree for specific performance of an agreement for sale of the suit premises has been passed by the court of competent jurisdiction in their favour.

In such scenario, we feel that the presence of the defendants/appellants in the suit is necessary, as any adjudication would have an impact on their right secured by way of decree passed by the competent court.

In such view of the matter, in exercising suo motu powers enshrined under Order I Rule 10(2) of the Code of Civil Procedure, we direct the addition of the appellants as defendants in the said suit.

The defendants/appellants are directed to file affidavit-in-opposition to the application for temporary injunction within seven days from date; reply thereto, if any, shall be filed within four days thereafter.

The trial court is requested to dispose of the application for temporary injunction in presence of the defendants/appellants and the plaintiff/respondent for the simple reason that any order of injunction would vitally affect the right of the present defendants/appellants as the other defendant, who is the vendor of the defendants/appellants, has already

suffered a decree for specific performance of an agreement in a suit filed by the defendants/appellants.

The endeavour shall be shown to dispose of the said injunction application on or before the closure of the trial court for Christmas Vacation.

The time limit indicated herein above is peremptory and mandatory and in the event the affidavit-in-opposition is not filed by the defendants/appellants within the time stipulated herein above or in the event the reply is also not filed within the time limit, the trial court shall proceed to decide the application for temporary injunction.

With these observations, both the appeals and the connected applications are disposed of.

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

(Harish Tandon, J.)

(Madhuresh Prasad, J.)