

27.06.2023
SL No.7
Court No.37
(gc)

**In The High Court at Calcutta
Civil Appellate Jurisdiction
Commercial Division**

**FMAT (ARBAWARD) 21 of 2023
CAN 1 of 2023**

**Ayat Developers & Ors.
Vs.
Smt. Chaitali Paul & Anr.**

Mr. Ashim Kumar Routh,
Ms. Anindita Auddy (Das)
...for the Appellants.

The learned Counsel for the appellants submits that pursuant to the registered development agreement between the parties, 95% of the work is complete and in view of the fact that the appellants did not accede to the request of the respondents to pay amounts that are not payable to the development agreement, they are causing let and hindrance. It is submitted on behalf of the appellants that the Trial Court although had recorded that the petitioner was successful in establishing the three principles with regard to the grant of temporary injunction, namely, prima facie case, balance of convenience and inconvenience, and irreparable loss and injury had refused to pass an order of injunction restraining the respondents from creating hindrance and/or disturbance in completing the construction.

It appears that the learned Trial Court after recording the facts was of the opinion that the

petitioner was able to make out an arguable case on merits which requires adjudication by the arbitral tribunal. The learned Trial Judge was also of the view that the petitioner was able to fulfil the requirement in the grant of temporary injunction, however, refused to pass an interim order without given an opportunity to the respondents.

In view of the fact that the learned Trial Judge has fixed the matter on 3rd July, 2023 and it is submitted on instruction that the notice has been served upon the said respondents, we are not inclined to interfere with the order at this stage. However, we request the learned Trial Judge to reconsider the matter for granting interim relief on 3rd July, 2023 when the matter is fixed for reconsideration.

We are in agreement with the learned Counsel for the appellants that having regard to the findings arrived at by the learned Trial Court at the time of initial hearing of the injunction application, a prayer for injunction ought to have been passed.

In view of the fact that the matter is fixed on 3rd July, 2023 and only four days are left in between, we request the learned Trial Court to decide the issue of injunction on 3rd July, 2023 before affidavits without granting any adjournment to either of the parties.

The learned Trial Judge shall not be influenced by the observation made by us in not interfering with the order as we strongly believe that the Trial Court

ought to have passed an order on the fact stated for a limited period and thereafter to reconsider the matter in presence of the parties.

Accordingly, the appeal and the application stand disposed of.

However, there shall be no order as to costs.

Urgent Photostat certified copy of this order, if applied for, be given to the parties on usual undertaking.

(Uday Kumar, J.)

(Soumen Sen, J.)