21 13.12.2023

Ct. No. 04

ab

FMA 470 of 2023
IA No. CAN 1 of 2023

Fayaz Zia
Vs.
Bakul Chowdhury and others.

Mr. Partha Pratim Roy,
Mr. Lutful Haque,
Mr. Golam Karim Choudhury,
Ms. Taharima Khatun.
... for the appellant.
Mr. Tarak Nath Halder.
... for the respondent nos. 7 to 11.

The instant appeal arises from an order dated 30th March 2023 passed by the learned Civil Judge (Senior Division), Sealdah whereby and whereunder the ex parte ad interim order of injunction was refused on the ground that though the plaintiff/appellant filed few documents, but on perusal of the said documents, he has not been able to make out a prima facie case.

It is further observed that the plaintiff/appellant has also not filed agreement of sale in between the plaintiff and the defendants in order to corroborate the stand that the plaintiff/appellant has paid the entire consideration amount for purchase of the said property.

We do not find any fetter nor the law puts any obstacle in the oral agreement. The money receipts enclosed with the application for temporary injunction revealed that certain amount has been received as advance towards the total consideration price mentioned therein and the subsequent payment as well.

It is a specific case of the plaintiff/appellant that pursuant to such oral agreement substantial amount out of the consideration price has already been paid either by cash or through bank transactions and, therefore, the finding of the Trial Court is perverse and, in fact, the learned Judge in the Trial Court acted with closed mind.

The plaintiff/appellant filed a suit for specific performance of an agreement for sale and also took out an application for temporary injunction so that the possession obtained by the plaintiff/appellant from one of the vendors in part performance of an agreement for sale shall be protected and the vendors be restrained from selling, alienating and transferring and/or conveying the property in any manner whatsoever in favour of a third party.

We are not unmindful of the proposition of law that while granting the ex parte ad interim order of injunction, the Court must record reasons not only in respect of an existence of a prima facie case but the balance of convenience and inconvenience as well as the irreparable loss and injury to be suffered. The money receipts have been filed, which vividly reflects the intention of the parties as well as the total consideration price agreed for purchase of their share in respect of the suit property and, therefore, we do not find any justification in the findings returned by the Trial Court that the plaintiff/appellant has not been able to make out a prima facie case. Even one of the deed of sale in respect of a share of a co-sharer is also annexed to the application and the stamp duty as well as the registration charges leviable thereupon has also been deposited with the concerned department.

However, the Counsel for the defendant/respondent nos. 7 to 11 took a stand that the money receipts annexed to the application contained the fabricated signature of his clients. The Counsel has gone to the extent that his clients are not aware of the name of the plaintiff/appellant nor have any transaction at any point of time and became aware of such alleged sale after receiving the application for temporary injunction as directed by the Trial Court.

Our attention is drawn to the details of an account maintained by the plaintiff/appellant wherefrom it appears that a substantial amount was debited from the said account in favour of one of the appearing respondents. Whether the signature appended on the said money receipt is fabricated, manufactured or forged by the plaintiff/appellant is a matter to be decided at the time of hearing of the application for temporary injunction or at the time of trial, as the Court may deem fit, but the existence of such transactions cannot be overlooked by us. We are also conscious of the proposition of law that if any transaction is made by the vendors in respect of a suit property by creating a third party interest, it would not only invite the multiplicity of proceedings but may augment an equitable defence available to such third party, which may have impacted the ultimate relief to be granted in the said proceedings.

We, therefore, restrain the defendants/respondents from alienating, transferring, selling and/or encumbering the suit property in favour of a third party for a period of eight weeks from date or until further order/orders of this Court, whichever is earlier.

The appearing respondents are directed to file affidavit-in-opposition to the application for temporary injunction on or before the closure of the Court for Christmas Vacation and it goes without saying that the point taken before us shall also be taken in the said affidavit-in-opposition so that the Court may be in a position to verify the veracity and the truthfulness of such allegation by taking a recourse available under the law. The Court shall also permit the non-appearing respondents, if they appeared before the Trial Court after the service of the application under Order XXXIX Rule 3 of the Code of Civil Procedure, to file affidavit-in-opposition within a reasonable time. The plaintiff/appellant in such eventualities shall be entitled to file reply within one week from date of service of the affidavit-in-opposition.

The Trial Court is directed to dispose of the application for temporary injunction on merit within the period of ad interim order of injunction granted by us and in the event it is not possible to dispose of the application for temporary injunction within the time so limited, it is open to the Trial Court to pass an appropriate order extending the same by recording reasons in accordance with law without any further reference to this Court.

With these observations, the appeal and the connected application being CAN 1 of 2023 are disposed of.

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

(Harish Tandon, J.)

(Madhuresh Prasad, J.)