

09 **16.08.
2023**

Ct. No. 04

Ab

**FMA 528 of 2023
IA No. CAN 1 of 2023**

**Muslam Sekh and others
Vs.
Jnanbhusan Saha and another.**

**Mr. Rabindranath Mahato,
Mr. Pinaki Dhole,
Mr. Aritra Shankar Ray.
... for the appellants.**

**Ms. Seema Ghosh,
Ms. Moumita Chakraborty.
... for the respondents.**

The belligerent litigants are taking a technical plea to frustrate the order of injunction passed by the trial court and have filed the instant appeal on the score that the trial court cannot pass an order of injunction on a second application for temporary injunction when the first one was disposed of by this Court with clear stipulation that the order of temporary injunction would remain operative till 15th March 2023.

It is sought to be contended that the court must enter into the merit again in a second application for temporary injunction and should not decide the same in the manner as has been done in the instant case. So far as the second point is concerned, there is no ambiguity to the fact that if the same is based on fact germane in course of the proceedings, the court shall enter into the merit thereof if a fresh or further order is required to be made.

The instant case has a special fact, which distinguish the ordinary notion in relation to dealing with a second application for temporary injunction. There is no fetter in the Code of Civil Procedure that more than one application for temporary injunction cannot be taken out in a suit. It would be a completely misnomer that

once an application for temporary injunction was disposed of, even if the exigency requires the protection of the right pending the suit, the second application for temporary injunction cannot be maintained.

The law is somewhat settled that more than one application for temporary injunction can be taken out provided necessitated by changed circumstances and the facts, which emanate subsequent to the institution of the suit or the disposal of an application for temporary injunction. The court after considering the merit of the case made out by the respective parties granted a temporary injunction restraining the defendants/appellants from dealing with, alienating and/or encumbering the suit property till 15th March 2023 or till the decree is passed by the learned court below, whichever is earlier.

The aforesaid order of temporary injunction was passed with the profound hope and trust reposed upon the trial court to dispose of the suit by the end of February 2023. Immediately after the expiration of 15th March 2023, the defendants/appellants started making construction for which there was a forbearance by an interdict issued by the court, which is manifest from the written objection filed by them. The trial court recorded the events happened after the order of temporary injunction passed by this Court with further direction that the suit to be disposed of within February 2023. It is recorded that after the communication of the said order, the plaintiffs/respondents have filed interlocutory petition so frequently, which impedes the progress of trial in the suit.

It is a duty of the court to adhere the time limit, which is indicated by the higher forum and should manage the court affairs in this regard. In the event of frequent filing of an application with a motive to frustrate the progress of trial, the court is not denuded of any power to deal with the same. The trial court has also

recorded that because of the resolution of the Bar to pen down, the trial could not be completed within the timeframe, which, in our opinion, cannot be a factor for delayed trial.

Be that as it may, the party, who has obtained the order of injunction, cannot be deprived of the same because of the circumstances or the events happened, which could have been well managed by innovating the procedure for court management.

Be that as it may, the moment this Court found a prima facie case having made out upon taking into account the relevant stands of the parties, we do not find that such order should be frustrated or to be rendered otiose or redundant as the trial could not be completed.

The application for temporary injunction can be taken out even after the first application for temporary injunction is disposed of provided it is necessitated by changed circumstances. If the subsequent events have been narrated, which require re-imposition of the order, we do not find any fetter in the Code or otherwise in the inherent powers having conferred upon the court to pass an order *ex debito justitiae*.

However, we are not unmindful of the situation that despite a specific order passed by this Court to complete the trial and dispose of the suit by the end of February 2023, the suit is still traveling on a peripheral of the docket of the court. We, therefore, direct the trial court to complete the trial of the case and bring the suit to its logical conclusion on or before the commencement of long vacation. The time limit set forth herein is peremptory and mandatory.

We further record that the parties shall not ask for any adjournment and in the event the adjournment is granted because of the unavoidable and unforeseen circumstances, the trial court shall fix the matter on day to day basis and shall see that the time limit fixed herein above is rigorously maintained.

We, thus, do not find any interference with the impugned order.

The appeal is disposed of in the light of the above observations.

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.)

(Ajay Kumar Gupta, J.)