

22 19.07.23

Ct. No. 04

akd

F.M.A.T. 284 of 2023
CAN 1 of 2023

Ashis Kumar Chakraborty & Anr.

Vs.

Pradip Mondal

Mr. Siva Prasad Ghose.

... for the appellants.

Mr. Bishajib Ghosh,

Mr. Rupak Ghosh,

Mr. Amir Ali,

Mr. Abhishek Agarwal.

... for the respondent.

Leave is granted to the learned Advocate on record of the appellants to correct the number of the Title Suit in the Memorandum of Appeal here and now.

The instant appeal arises from the order dated 18th May, 2023 passed by the learned Civil Judge (Senior Division), 3rd Court, Barasat, North 24-Parganas in Title Suit 575 of 2023, by which an ex parte ad interim order of injunction is granted restraining the defendants/appellants from transferring/alienating the suit property in any manner or creating any form of third party interest.

The defendants have filed the instant appeal assailing the ex parte ad interim order of injunction and sought to contend that there has been a gross suppression of material facts in the plaint as well as the application for temporary injunction filed by the respondent, which, if disclosed before the Trial Court, would not have invited the order passed in the manner as has been done in the impugned order.

In course of hearing, it is brought to our notice that the defendants/appellants had filed an application under Order XXXIX Rule 4 of the Code of Civil Procedure alleging gross suppression of material facts and also written objection against the application for temporary injunction and, in fact, also filed a written

statement.

We have given to understand that the next date is fixed on 7th August, 2023, though not for the purpose of hearing the injunction application or an application for variation, vacation and/or setting aside the ex parte ad interim order of injunction.

We are conscious of the proposition that a defendant has three fold remedies against the ex parte ad interim order of injunction; firstly he can file an objection to the application for temporary injunction in answering the show cause issued upon it; secondly he can take out an application under Order XXXIX Rule 4 of the Code alleging suppression of material facts and seek modification, vacation and/or setting aside the ex parte ad interim order of injunction; and thirdly he can prefer an appeal under Order XLI Rule 1 (r) of the Code before the Appellate Court.

The moment the third remedy is exhausted, it admits no ambiguity that the defendant has to confine its argument within the four corners of the plaint as well as the application for temporary injunction and the documents annexed thereto and ordinarily cannot be permitted to bring the plea of defence before the Appellate Court. The expression “ordinarily” is used in the sense that there is no absolute bar upon the Appellate Court in not considering the facts disclosed by the defendant but such exercise must be done in exceptional or extraordinary cases.

Since the defendants/appellants have already filed an objection to the application for temporary injunction and also filed an application under Order XXXIX Rule 4 of the Code, we do not find any impediment in disposing of the application for temporary injunction at the earliest.

Since the next date is fixed on 7th August, 2023,

we, therefore, direct the respondent to file affidavit-in-opposition to the application filed under Order XXXIX Rule 4 of the Code within a week from date. In addition to the same the respondent may also file an affidavit-in-reply, if so chooses, to the written objection filed by the appellant to the application for temporary injunction within the same time.

Upon receiving the copy of the affidavit-in-opposition to the application under Order XXXIX Rule 4 of the Code, the defendants/appellants are permitted to file reply thereto, if so advised, within a week therefrom.

Since the next date is fixed on 7th August, 2023 for service return, we direct that the said date may be fixed for the purpose of disposal of the application for temporary injunction and the application under Order XXXIX Rule 4 of the Code.

Since the aforesaid direction is passed in presence of both the parties, they are at liberty to communicate the same to the Trial Court so that the learned Judge is made aware that the said date is fixed for hearing and disposal of the application for temporary injunction and an application under Order XXXIX Rule 4 of the Code.

In the event, the learned Judge is unable to dispose of the aforesaid applications on the aforesaid date, effort should be shown to dispose of the same within a week thereafter.

Parties shall not pray for unnecessary adjournment and shall co-operate and assist the Court in keeping the time limit set-forth hereinabove.

With the above observations, the appeal and connected application are disposed of.

(Harish Tandon, J.)

(Prasenjit Biswas, J.)

