

36 **11.10.
2023**

Ct. No. 04

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**FMA 1180 of 2022
IA No. CAN 1 of 2023**

**Ansar Ali Kazi and another
Vs.
Khurshid Alam Tarafdar.**

**Mr. Debasish Roy,
Mr. Anjan Banerjee.**

... for the appellants.

**Mr. Shyamal Kumar Das,
Ms. Smita Pal,
Mr. Krishna Yadav.**

... for the respondent.

The instant appeal arises from an order no. 06 dated 31st May 2022 passed by the learned Civil Judge (Senior Division), 1st Court, Barasat, by which an application for temporary injunction is disposed of restraining the defendants/appellants from alienating the suit property to a third party till the disposal of the suit.

Our attention is drawn by the learned Advocate appearing for the appellants on the so-called findings returned by the trial Court.

According to the learned Advocate for the appellants, the impugned order lacks reasoning required for granting the temporary injunction.

We peruse the impugned order wherefrom it appears that after the usual recording of the appearance and the nature of the application fixed for hearing, the case made out by the plaintiff/respondent is extensively narrated therein. The next paragraph contained the stand of the defendants/appellants in relation to an allegation made by the plaintiff/respondent and thereafter the trial Court proceeded to record that it has an occasion to go through the case records and perused the agreement and the other documents and surreptitiously jumped to the conclusion that the plaintiff/respondent has been able to make out a prima

facie case.

We failed to find out any reasons and/or findings recorded in the impugned order on the existence of the prima facie case nor we find any discussion having been recorded therein relating to the balance of convenience and/or inconvenience and irreparable loss and injury. The aforesaid ingredients being an integral part of the dispensation by the Court while granting temporary injunction, which cannot be ignored, overlooked and/or avoided. Furthermore, a party to the litigation has a right to know the reasons either denying the relief or granting an order against him.

The another important facet of mandatory requirement of providing the reasons is that in the event the party chose to move before the higher forum, it would assist the appellate forum to understand the reasons in support of the ultimate decision.

The impugned order lacks reasons and, therefore, cannot be sustained. Accordingly, the order impugned is set aside.

The trial Court is directed to dispose of the application for temporary injunction afresh after giving an opportunity of hearing to the respective parties and all endeavour shall be made to dispose of the same before the ensuing Puja Vacation.

The parties or the respective learned Advocates, who are appearing before us, are permitted to communicate this order to the trial Court immediately, which shall act on the basis thereof without insisting for the certified copy of the instant order.

The appeal and the connected application being CAN 1 of 2023 are disposed of.

(Harish Tandon, J.)

(Prasenjit Biswas, J.)

