

01 20.11.23

Ct. No. 04

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F.M.A.T. 369 of 2023

CAN 1 of 2023

**M/s. Yummygra Chains Private Limited
Vs.
Mukesh Kumar Singhania.**

**Mr. Mainak Bose,
Mr. Rishabh Karnani,
Mr. Nikunj Berlia.**

... for the appellant.

**Mr. Suman Kumar Dutt,
Mr. Debmalya Ghosal,
Mr. Niladri Khanra,
Mr. Animesh Chatterjee,
Mr. Mainak Biswas.**

... for the respondent.

Pursuant to the order dated 17th November, 2023 the Special Officer appointed by us submits the report, which is taken on record. The report reveals the state of affairs existing on the date of inspection which does not throw any light on the installation and/or equipment installed by the appellant therein. Let the copy of the report of the Special Officer be circulated amongst the appearing Counsels, which, in fact, has been done in Court today.

We make it clear that the Special Officer was appointed for the purpose of the instant appeal which shall not be treated as report submitted by a commissioner on inspection done under Order XXXIX Rule 7 of the Code of Civil Procedure.

The instant appeal arises from the order by which the Trial Court refused to pass an ex parte ad interim order of injunction. Obviously the scope of the instant appeal is limited, as the application for temporary injunction is pending before the Trial Court. Order XXXIX Rule 3 of the Code though provides the power of the Trial Court to pass an ex parte ad interim order of injunction, but the normal rule as envisaged therefrom

is that endeavour must be made to serve notice or the copy of the application upon the defendant.

Since the Court did not find any exception to be taken as provided under Order XXXIX Rule 3 of the Code, we, therefore, feel that justice would be subserved if the defendant, who appeared before us, is afforded an opportunity of hearing and the injunction application is decided by the Trial Court on priority basis.

We are conscious that any observations made on the merit of the case may have an impact on the decision to be taken by the Trial Court, therefore, we refrain ourselves to make any observation on the merit of the instant case.

Since the defendant has entered appearance in the instant appeal, he is permitted to file affidavit-in-opposition to the application for temporary injunction within ten days from date; reply thereto, if any, be filed within three days thereafter.

The Trial Court is requested to dispose of the application for temporary injunction within fortnight from the date of expiration of the period for exchange of affidavits on merit and by recording proper reasons in accordance with law.

For abundant precaution we hereby make it clear that any observations touching upon the merit of the case whether, accidentally or incidentally, shall not have any persuasive effect on the learned Judge in deciding the application for temporary injunction in presence of the parties.

With the above observations the instant appeal and application are disposed of.

(Harish Tandon, J.)

(Madhuresh Prasad, J.)

