

15-17 16.10.
2023
Ct. No. 04
ab

FMAT 392 of 2023
IA No. CAN 1 of 2023
With
FMAT 490 of 2023
With
FMA 779 of 2023

Mrs. Gita Sanghi and others
Vs.
Madhukar Birla Family Kosh and others.

Mr. Mainak Bose,
Mr. Sidharth Sharma,
Mr. Rishav Dutt,
Mr. Swarbhanu Bhattacharya.
... for the appellants.

Mr. Sakya Sen,
Mr. Sunil Gupta.
... for the respondent nos. 1 to 4.

Ms. Pritha Basu,
Mr. Debartha Chakraborty,
Mr. Kritin Saraf.
... for the respondent no. 8.

The matters are appearing at the stage of Order XLI Rule 11 of the Code of Civil Procedure and the plaintiffs/respondents are represented pursuant to the Caveat lodged by them. However, respondent no. 8 appeared and submits that she has an instruction to appear in the instant appeals.

Since the appeal arises from an order granting ex parte ad interim order of injunction against the defendants/appellants, but the persons who will be affected by an order passed in the instant appeal would be the plaintiffs/respondents.

Be that as it may, the respondent no. 8 has appeared and the copy of the application has been served upon it in Court today. Its presence is only required in the appeal as the said respondent is neither affected nor

benefited by an ex parte ad interim order of injunction.

The dispute relates to a declaration of the right, title and interest of the plaintiffs/respondents and the status of the defendants/appellants in respect of the subject property, which is admittedly a tenanted property. Several allegations have been made against the defendants/appellants about their conduct and the misdeed in relation to the said property, but we do not intend to go more deep into such aspect as the parties have not disclosed their stand or permitted to deal with the allegations made in the plaint as well as the application for temporary injunction.

The Court found that the plaintiffs/respondents have made out a prima facie case to go for trial and also considers that the balance of convenience and inconvenience as well as the loss and injury, which they would suffer, if the ex parte ad interim order of injunction is not granted. The Court observes that the possession of tenanted premises with the defendants/appellants as pleaded in the plaint. The entire endeavour of the parties before us is to either modify the order or clarify the order impugned in the instant appeal.

The Counsel for the respective parties are at variance so far as the nature of the impugned order is concerned for which we feel that the appellate Court should not interfere. The purport of the order and the interpretation thereof is required to be clarified by the Judge, who passed the said order in relation to the facts and the submissions advanced before it and, therefore, we do not think that any interference at this stage is permissible.

Furthermore, an appeal against an ex parte ad interim order of injunction should be decided within the four corners of the averments made in the plaint as well as the application for temporary injunction and the documents produced before the Court by the plaintiffs/respondents and to treat such averments to be correct and true and thereafter may contend that despite the existence of those facts there was no occasion for passing an ex parte ad interim order of injunction.

Several pleas have been taken by the defendants/appellants, some of which may strike at the root of the jurisdiction and the entertainability of the proceedings and some on factual aspect to which we feel that it would be proper if the application for temporary injunction itself is decided upon exchange of affidavits.

We, therefore, direct the defendants/appellants to file affidavit-in-opposition to the application for temporary injunction on the reopening of the Court following Puja Vacation for the year 2023; reply, if any, shall be filed by the plaintiffs/respondents within three days thereafter.

We are given to understand that the respondent no. 8 has already filed opposition to the application for temporary injunction in the trial Court, liberty is granted to the plaintiffs/respondents to file reply thereto along with the reply to the opposition to be filed by the defendants/appellants within the time as indicated herein above.

The trial Court shall make endeavour to dispose of the application for temporary injunction within fortnight from the date of expiration of period for exchange of affidavits by giving opportunity of hearing to all the

contesting parties before us.

It goes without saying that all points agitated before us or available to the respective parties if taken before the trial Court are kept open and shall be decided independently on its merit without being influenced by the fact that this Court did not interfere with the ex parte ad interim order of injunction as extended from time to time.

The appeals and the connected application are disposed of.

(Harish Tandon, J.)

(Prasenjit Biswas, J.)