

19.01.2023
S/L. No. 3
Court No.12
Suvayan/
Sourav

FMAT 404 of 2022
With
IA No: CAN 1 of 2022

Sanjoy Ghosh
Vs.
Calcutta Club Ltd.

Mr. Debnath Ghosh
Mr. Soumyajit Mishra

...for the appellant.

Mr. Anirban Ray
Ms. Munmun Ganguly
Mr. Sayak Ranjan Ganguly
Mr. Saunak Banerjee
Ms. Srijani Ghosh

...for the respondent.

Heard Mr. Debnath Ghosh, learned Counsel for the appellant and Mr. Anirban Ray, learned Counsel for the respondent.

This appeal arises out of rejection of a prayer under Order 39 Rules 1 and 2 C.P.C. for injunction in respect of the suspension order passed against the appellant. In page 3 of the order in the last paragraph, learned Trial Court has observed thus:

“That the arguments advanced by the Ld. Advocate on behalf of defendant pertaining to the matter of urgency are the subject matter of trial which cannot be decided without taking evidence of the parties. However, the apprehension of the plaintiff over the suspension

dated 26.07.2022 has got no urgency at this moment because the communication regarding the suspension has already been circulated through the forum of the club.”

Learned Counsel for the appellant is very much aggrieved by this observation of learned Trial Court.

Having heard the learned Counsel for the parties, we make it clear that for disposal of a petition relating to injunction under Order 39 Rules 1 and 2 C.P.C. production of evidence is not a *sine qua non*. Such petition can be disposed of on the basis of affidavits and documents filed along with the complaints and written statements, if any, on finding of 1) *prima facie* case, 2) balance of convenience, 3) irreparable loss and injury and 4) public interest involved, if any.

This being a dispute between the appellant who is a member of the club and the club itself, the forth ingredient may not be necessary ingredient in our considered view. On satisfaction of the aforesaid three ingredients for which, we need not refer to any decision to avoid burdening our order, injunction may be granted or refused.

It is submitted by learned Counsel for both the parties that the matter is fixed to February 10, 2023

for final hearing on the question of injunction though *ad interim* injunction has been denied.

In view of such fact, we deem it just and proper to advise learned Counsel for the appellant and for the respondent to put forward their case before the learned Trial Court at the time of final hearing of the injunction petition. It is made clear that learned Trial Court shall not be influenced by the order impugned in this appeal while passing the final order on the petition for injunction and he shall not take into consideration his observation in the impugned order which we have discussed (*Supra*). The hearing of the injunction petition shall be taken up on February 10, 2023 and the same be concluded on that date and order thereon shall be passed within 10 days thereafter.

If any party is aggrieved by the said order, they are at liberty to file appeal against that order.

The appeal being FMAT 404 of 2022 along with CAN 1 of 2022 are accordingly disposed of.

The record along with the copy of this order be sent down to the department for needful action at their end.

(Chitta Ranjan Dash, J.)

(Partha Sarathi Sen, J.)