

118 **17.11.**
2023

Ct. No. 04

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FMA 1256 of 2022
IA No. CAN 1 of 2022

Dipankar Ghosh and others
Vs.
Sri Ananda Mohon Ghosh and others.

Mr. Pratick Sardar.

... for the appellants.

Mr. Asim Kumar Roy,
Mr. Ashok Kumar Roy,
Mr. Anirban Roy.

... for the respondent nos. 1, 6, 7 and 12.

The instant appeal arises from an order no. 138 dated 8th September 2022 passed by the learned Civil Judge (Senior Division), Basirhat, North 24-Parganas in Title Suit No. 45 of 2001 by which an application for temporary injunction is rejected solely on the ground that there is no urgency in granting an order of injunction as prayed for. It is further observed that the allegation as to the disturbance of possession is unbelievable and, therefore, the plaintiffs/appellants have miserably failed to make out a prima facie case.

The tenet of the order as deciphered from the findings returned therein appears to us that the learned Judge was swayed by the disclosure of the dates pertaining to an accrual of the cause of action and proceeded to dismiss the application for temporary injunction solely on the ground of delay.

It is no longer *res integra* that an application for temporary injunction is decided on three golden parameters, namely, (1) existence of prima facie case, (2) balance of convenience and inconvenience and (3) irreparable loss and injury. The delay cannot be the sole factor for denying the temporary injunction if necessitated by the facts disclosed by the litigant applying therefor.

Indubitably, a suit for partition is filed for separation of shares based on several transactions entered between the co-sharers/co-owners of the entire property. The defence as it appears from the written statement filed by the contesting defendant no. 1 relates to the transactions between the admitted co-sharers being void, which is required to be decided on the basis of the evidence produced in this regard.

The order impugned appears to us a cryptic one having not disclosed the facts averred in the application for temporary injunction and the defence taken by the contesting defendants in order to arrive at the decision whether the plaintiffs/appellants have been able to make out a prima facie case for passing an injunction or not.

Since the order is bereft of proper reasons, we, therefore, cannot permit such order to survive or taken on record as the reason is one of the important factors in dispensation of justice in adversarial system of adjudication. Any attempt to decide the cause without recording the proper reasons cannot receive the blessings of higher forum and, therefore, the order impugned needs interference.

Accordingly, the order impugned is set aside.

The trial court is directed to rehear the application for temporary injunction filed by the plaintiffs/appellants after affording an opportunity to the contesting defendants and upon recording the proper reasons required in this regard.

We expect that the learned Judge in the trial court would make endeavour to dispose of the application for temporary injunction within fortnight from the date of communication of this order; if necessary, by preponing the date in presence of the contesting parties.

With these observations, the appeal is disposed of.

In view of the disposal of the appeal itself, the connected application being CAN 1 of 2022 has become

infructuous and the same is also disposed of.

There shall, however, be no order as to costs.

(Harish Tandon, J.)

(Madhuresh Prasad, J.)