

09.02.2024

Court : 04
Item : 01
Matter : FMAT
Status : OP
Bench ID : 266176
Transcriber : NANDY

**IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION**

APPELLATE SIDE

**FMAT 449 of 2023
with
CAN 3 of 2024**

Yajur Fibres Limited
Vs.
Dharmendra Tiwari & Ors.

**Mr. Chayan Gupta, Advocate
Mr. Souradeep Banerjee, Advocate
Mr. Dwip Raj Basu, Advocate**

.....for the Appellant

**Mr. Srijib Chakraborty, Advocate
Mr. Sumitava Chakraborty, Advocate
Mr. Abhishek Mukherjee, Advocate**

.....for the Respondent Nos. 1 to 6

CAN 3 of 2024

1. The technicalities cannot stand in the way of rendering the substantial justice. The moment the technicalities are pitted against the social justice, the latter would prevail.
2. The instant appeal was disposed of 22.11.2023 with the specific direction upon the Trial Court to dispose of the application for temporary injunction within the time framed therein. This Court was of the view that the appellant has been able to make out a *prima facie* case and, therefore, passed an *ad interim* order of injunction to operate for a further period of two months with an avowed object that the application for temporary injunction would be disposed of within such time.
3. It has been informed to us, which is also reflected from an application taken out by the appellant that the hearing was concluded by the learned Judge-in-charge and the matter was reserved for judgment. However, the learned Judge-in-charge became

indisposed and took medical leave which constrained him from delivering the judgment and subsequently he has been transferred from the said post.

4. It is unfortunate that a put-up petition was sought to be moved before the Judge-in-charge of the Court, but the same was not taken on record; rather the copy of the said put-up petition is also annexed with the said application revealing that the same was served upon the learned Advocate for the opposite party who put an endorsement thereupon in this regard.
5. The moment the Appellate Court has directed the matter to be disposed of within a timeframe and passed an *ad interim* order of injunction to operate for a limited period, it is improbable, unreasonable that the learned Judge would not take up the put-up petition and pass an appropriate order thereupon.
6. A technical plea has been taken by Mr. Chakraborty, learned Advocate for the respondents, obviously taking advantage of such impasse having been created that the Appellate Court is denuded of power to pass any direction in the instant appeal.
7. We are un-impressed with the aforesaid submissions as a person cannot take advantage of the procedural lapses and reap the benefit therefrom. The procedure is the handmade of justice and cannot be treated as a jealous mistress. The substantial justice is paramount and if the parties cannot be saddled with any lapses on their part, the law does not stand as an impediment in extending the justice to the litigant.
8. We, therefore, **dispose of** the instant application being **CAN 3 of 2024** directing the Judge-in-charge i.e. the Second Court of Additional District Judge, to hear out the application for temporary injunction afresh and shall dispose of the same within a fortnight from date.

9. The *ad interim* order of injunction granted on 22.11.2023 is extended for a period of three weeks from date or until further order, whichever is earlier.
10. It is, however, made clear that none of the parties would seek adjournment except necessitated by unforeseen and unavoidable circumstances; even in this regard, the learned Judge would adhere to the time limit set forth herein and if necessary, shall fix the matter on day-to-day basis.
11. For abundant precaution it is once again reiterated that the consideration at the time of passing an *ad interim* order of injunction is different from the consideration at the time of disposal of an application for temporary injunction and, therefore, the learned Judge shall not be swayed by the fact that this Court has passed an *ad interim* order of injunction.

(Harish Tandon, J.)

(Madhuresh Prasad, J.)