

34 **12.10.**
2023

Ct. No. 04

ab

FMAT 467 of 2023
IA No. CAN 1 of 2023

Sri Biswajit Bhunia
Vs.
Sri Santonu Sekhar Pradhan.

Mrs. Shohini Chakraborty,
Mr. Arijit Sarkar.

... for the appellant.

The instant appeal arises from an order no. 2 dated 19th September 2023 passed by the learned Civil Judge (Senior Division), 2nd Court at Contai, Purba Medinipur, in OS 25 of 23 by which a prayer for ex parte ad interim order of injunction is refused.

The aforesaid suit was filed for specific performance of an agreement for sale wherein the total consideration price as agreed upon is shown as Rs. 50,00,000/-. It is claimed by the plaintiff/appellant that out of the aforesaid total consideration amount, a sum of Rs. 10,00,000/- was paid at the time of execution of the said agreement. It is further stated that the period for completion of the transaction was agreed upon by the parties to be completed within three years from the date of the execution thereof, but on being requisitioned by the plaintiff/appellant to execute and register the sale deed, there was a reluctance on the part of the defendant/respondent. Obviously, the reason for refusal to all comply the terms and conditions of the purported agreement is a cause of action for the purpose of filing a suit for specific performance of an agreement.

An application for temporary injunction was taken out seeking an order of temporary injunction upon the defendant/respondent to the effect that he will not create a third party interest in respect of the suit property till the disposal of the suit. It is indicated therein that there

is an intention apparent from the conduct of the defendant/respondent to create a third party interest and unless the *ex parte* ad interim order of injunction is not passed in this regard, it would cause immense injury to the plaintiff/appellant.

The trial Court refused to pass an ad interim order of injunction on taking into account the letter dated 8th September 2023 issued by an Advocate on behalf of the defendant/respondent seeking the possession of the suit premises. It is sought to be contended that there is a clear averment in an application that the defendant/respondent is trying to create a third party interest in respect of the property and, therefore, the Court ought to have passed an *ex parte* ad interim order of injunction pending a suit for specific performance of an agreement for the simple reason that if any third party interest is created, it may invite the third party to be impleaded as party, who under the equity may take a defence as bona fide purchaser for value without notice.

We do not find that mere apprehension would invite the Court to pass an *ex parte* ad interim order of injunction. Apart from the existence of a prima facie case and balance of convenience and inconvenience, the Court should weigh the claim of the plaintiff/appellant on the parameters of an injury to be suffered in the event the immediate protection is not provided.

Though the plaintiff/appellant has averred in the application for temporary injunction that the defendant/respondent is attempting to create a third party interest, but from the tenet of the letter produced before the trial Court, issued by the learned Advocate on behalf of the defendant/respondent, we find that the defendant/respondent wanted the possession of the suit premises from the plaintiff/appellant upon revocation of licence.

The intention is laudable from the language used

in the said letter caused by the learned Advocate on behalf of the defendant/respondent that the plaintiff/appellant was permitted to occupy the suit premises as licensee in the year 2008, much before the alleged execution of the agreement for sale. The notice seeking the possession upon revocation of licence cannot be construed as a good piece of evidence in relation to an allegation that the defendant/respondent is creating a third party interest.

Furthermore, it is manifest from the content of the said letter that the defendant/respondent wanted to use the suit premises for his personal use, which ruled out the apprehension that after taking possession, the third party interest shall be created. Apart from the same, once the notice revoking the licence is issued, the intention which could be gathered therefrom, is that a proceeding for recovery of possession would be initiated and until the actual possession is delivered to the defendant/respondent, it cannot create a third party interest by putting him in possession.

We, thus, do not find that the findings returned by the trial Court warrant any interference in the instant appeal.

The appeal and the connected application being CAN 1 of 2023 are dismissed.

It is, however, made clear that the observations made herein above shall not be construed to have any persuasive effect at the time of considering the prayer for interim order or disposal of an application for temporary injunction in presence of both the parties.

(Harish Tandon, J.)

(Prasenjit Biswas, J.)

