

21.12.2023
Sl No.3
Court No.8
(gc)

FMAT 565 of 2023
CAN 1 of 2023

Mohan Kumar Putatunda
Vs.
M/s. Midnapore Developers LLP,
Partnership Firm & Ors.

Mr. Anirban Majumder,
Mr. Abhinaba Chatterjee,
...for the Appellant.
Mr. Nilanjan Bhattacharjee,
Mr. Abhilash Chatterjee,
...for the Respondent Nos.1-4.

1. The appeal is arising out of an order dated 11th October, 2023 by the learned District Judge, Paschim Medinipur in connection with the application filed under Section 9 of the Arbitration and Conciliation Act, 1996 by which the learned District Judge refused to pass ex parte ad-interim order of injunction and appointment of receiver without giving an opportunity of hearing to the respondents.
2. The grievance of the petitioner appears to be that in the breach of development agreement, the respondents have proceeded in collusion with the other co-sharers from alienating the property in question. The appellant contends that the power of attorney executed by the appellant has been revoked and, accordingly, the respondents could not

have proceeded on the basis of the power of attorney. It is further alleged that the agreement is a product of fraud and misrepresentation.

3. The learned Counsel for the appellant has submitted before us that the learned Trial Court has disregarded the fact that after the power of attorney was revoked, the respondent authorities could not have proceeded with the construction work or alienating the flats on the basis of such cancelled power of attorney.
4. We are of the view the learned District Judge was justified in refusing the ad-interim order of injunction as the passing would have caused hardship and inconvenience to the parties without giving an opportunity of hearing to such respondents. It is essential to hear the developer and the other co-sharers who are parties to the said proceeding. The plaintiff claims to be only one of the co-sharers of the building or the property. However, his interest is also equally required to be protected. The matter was made returnable before the learned District Judge on 28th November, 2023. However, we could not find any plausible

explanation for not renewing the prayer for injunction and receiver on the adjourned date.

5. Mr. Abhilash Chatterjee, learned Counsel appears on behalf of the respondent Nos.1, to 4 has submitted that the respondents have not received copy of the memorandum of the stay petition. We also do not find from record that the respondents Nos.1 to 4 have been served. Although, the proforma respondents have been served.
6. Be that as it may, we feel that the respondents are required to be heard by the learned District Judge in deciding the said application.
7. Accordingly, we request the learned District Judge to hear the application under Section 9 of the Arbitration and Conciliation Act on the date fixed.
8. It would be open for the contesting respondents to file any objection to the application at least two days prior to the date fixed by the learned District Judge upon prior service to Mr. Mohan Kumar Putatunda who is appearing in person.
9. The learned District Judge is to ensure that the matter is either being heard by

him or assigned to a Bench if the Regular Bench is not available for early disposal of the said application.

10. The learned Trial Court shall decide the injunction application uninfluenced by any observation made in this order and after giving a reasonable opportunity of hearing to all the respondents.

11. We make it clear that any transfer or alienation or encumbrance in the meantime shall abide by the result of the application filed under Section 9 and shall not create any equity or interest in favour of any third parties.

12. With the aforesaid observation, the appeal and the application stand disposed of.

13. However, there shall be no order as to costs.

14. This order shall also be communicated to the non-appearing respondents by email or whatsapp.

15. Urgent Photostat certified copy of this order, if applied for, be given to the parties on usual undertaking.

(Uday Kumar, J.)

(Soumen Sen, J.)