

14 **12.06.
2023**

Ct. No. 04

ab

**FMAT 514 of 2022
IA No. CAN 1 of 2023**

**Smt. Bandana Nag and another
Vs.
Sandip Kumar Nag and others.**

Mr. Mritunjay Saha.

... for the appellants.

Mr. Animesh Das.

... for the respondent nos. 2 to 5.

The instant appeal arises from an order refusing to pass an *ex parte* ad interim order of injunction. A suit for recovery of money and permanent injunction has been filed by the plaintiffs/appellants against the defendants/respondents.

It is alleged that the defendant/respondent no. 1 is obliged to return the money to the plaintiffs/appellants, which they received by executing and registering a sale deed as a Constituted Attorney. The trial court found that the moment the property has been transferred and a right is created in favour of the respondent nos. 2 to 5, it would not be proper to pass an injunction in their absence.

The impugned order was passed as far back as in the month of December 2022 and, therefore, we feel that it would be profitable if the application for temporary injunction is disposed of. The respondents have entered appearance in the instant appeal and, therefore, we do not find any impediment in passing a direction for exchange of affidavits.

Accordingly, the respondents are directed to file affidavit-in-opposition to an application for temporary injunction filed by the plaintiffs/appellants in the trial court within two weeks from date; reply, if there be any,

shall be filed within a week thereafter and the trial court shall dispose of the application for temporary injunction within two weeks from the date of expiry of the period for exchange of affidavits.

After communication of this order, the trial court shall fix a date, if necessary, by preponing the same in order to adhere the time limit indicated herein above. All the parties appearing before us have assured that they would cooperate and assist the Court in maintaining the timeline given herein above and shall not pray for adjournment unless necessitated by unforeseen and unavoidable circumstances.

The trial court shall not be swayed by the fact that this Court decline to interfere with the impugned order as consideration at the time of passing an *ex parte* ad interim order of injunction is different than the consideration at the time of disposing the application for temporary injunction.

With these observations, the appeal and the connected application being CAN 1 of 2023 are disposed of.

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

(Harish Tandon, J.)

(Prasenjit Biswas, J.)

