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22-12-2023
(Ct. no.06)
debajyoti

**IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
APPELLATE SIDE**

**FMAT 575 of 2023
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IA NO:CAN/1/2023**

**Dip Chand Development Co. Limited
Vs.
Administrator General and Official Trustee**

Mr. Kalyan Bandopadhyay, Sr. Adv.,
Mr. Shounak Bhattacharya,
Mr. Subrata Goswami,
Mr. Shounak Mondal

... For the Appellant.

This First Miscellaneous Appeal is directed against a judgment and order dated December 15, 2023 passed by the learned City Civil Court in Title Suit No.2515 of 2023. By the order impugned, the learned trial Court refused to pass an *ex parte* ad interim order in favour of the plaintiff-company, which is the appellant herein.

The appellant claims to be sub-lessee in respect of the premises in question. The appellant says that under the agreement of sub-lease, he is permitted to make construction on the premises and also deal with the constructed area. It has never defaulted in payment of lease rent or has not done anything contrary to the terms of the sub-lease. The order of termination of sub-lease issued by the Office of the Administrator General and Official Trustee of West Bengal on December 01, 2023 is wholly illegal and is not based on any lawful ground. The notice is issued to three persons, namely, Rajiv Kankaria, Devyana Kankaria and Sudha Kankaria, who are Directors of the appellant. The appellant is a separate juristic entity. No notice has

been issued to the appellant. No opportunity of hearing or showing cause also was granted to the appellant. The notice dated December 01, 2023, is completely unsustainable in law and has been issued arbitrarily.

Mr. Bandopadhyay, learned Senior Advocate, appearing for the appellant, assisted by Mr. Shounak Bhattacharya, learned advocate, has taken us through the relevant documents. It does appear that the appellant/plaintiff has made out a *prima facie* arguable case. The balance of convenience is also in favour of granting ad interim protection as the termination notice is due to take effect from January 01, 2024.

Accordingly, we set aside the order under appeal. There will be an order of injunction restraining the defendant in the suit being the respondent herein, from giving any effect to the impugned notice dated December 01, 2023 till the end of February, 2024. The respondent/defendant is also restrained from interfering with the peaceful possession of the appellant in respect of the premises in question till the end of February, 2024.

Learned trial Court is requested to decide the plaintiff's injunction application on merits upon hearing both parties by the end of February, 2024. In the event the matter cannot be disposed of by that time, the learned trial Court should extend the interim protection till the disposal of the injunction application.

All observations made in this order are *prima facie* and only for the purpose of disposing of this appeal. The learned trial Court shall decide the plaintiff's injunction application independently, in accordance with law, without being influenced by any observation made in this order.

The appellant/plaintiff will be at liberty to mention the matter before the learned trial Court for appropriate directions.

The appeal and the connected application are, accordingly, disposed of.

All parties shall act on the server copies of this order duly downloaded from the official *website* of this Court.

Urgent photostat certified copies of this order, if applied for, be supplied to the parties on compliance of all necessary formalities.

(M. V. Muralidaran, J.) (Arijit Banerjee, J.)