

13.05.2024
sayandeep
Sl. No. 294
Ct. No. 04

FMAT 119 of 2024
With
CAN 1 of 2024

Aspirations Realtors Private Limited
-Versus-
Lambodar Construction & Trading Company Private
Limited

Mr. Suddhasatva Banerjee
Ms. Rituparna Chatterjee
Mr. S. Nayak
Mr. Zubeen Pandey

..... for the appellant

Mr. Siddhartha Banerjee
Mrs. Soni Ojha
Ms. Sonia Nandy
Ms. S. B. Chatterjee

.... for the respondent

The scope of the instant appeal is limited as the challenges thrown to an order dated 22nd March, 2024 whereby and whereunder prayer for *ex parte ad interim* order of injunction was refused by the Trial Court. The suit is filed by the appellant for a specific performance of a written as well as oral agreement allegedly entered into the parties. It is averred in the said plaint that an agreement was entered into for sale of the immovable property and a part payment in pursuance thereof was advanced to the respondent yet the respondent is contemplated to transfer and alienate the said property to a third party which would be evident from the fact that such intention manifest from the advertisement posted on the website of 99 acres in this regard. The

appellant has vividly pleaded the terms and conditions of an oral contract preceded by the written contract and allege the breach of such conditions by the respondent. The Trial Court refused to pass an *ex parte ad interim* order of injunction as the averments made in the plaint as well as temporary injunction application do not instill confidence in him to pass an order of restraint upon the respondent without affording an opportunity of hearing to them.

We are conscious that while passing an *ex parte ad interim* order of injunction, the Court must record reasons which may not be necessary in case of a refusal. The reason being that the service of notice upon the defendant is a normal rule and the exception is carved out in the event there is an imminent danger or the delay would defeat the very purpose of seeking a relief in the said suit. Though the advertisement posted on the internet site maintained by 99 acres are annexed to the injunction application but the respondent who appeared before us submits that such advertisement has not been posted by him.

In such view of the stand, there is no eminent threat over the invasion of right to which we think that an opportunity must be given to the respondent to deal with the allegations and/or averments made in the plaint as well as the injunction application before the Court delve upon the sanctity and the nitty-gritty of the said averments.

We thus do not find any immediate injury to be caused to the appellant. We, therefore, feel that the justice would be sub served if the respondent is given an opportunity to file affidavit-in-opposition to the application for temporary injunction and the temporary injunction application is decided on its merit.

We, therefore, direct the defendant/respondent to file affidavit-in-opposition to the application for temporary injunction before the Trial Court by 18th May, 2024. Reply thereto, if any, shall be filed by 22nd May, 2024.

The injunction application shall be fixed for hearing on 24th May, 2024. An endeavor shall be made to dispose of the same on the said date. In the event, for unavoidable reason the same could not be disposed of, effort should be made to dispose of the same within one week after reopening of the Court following the summer vacation.

Accordingly, the appeal and application are disposed of without any order as to costs.

(Harish Tandon, J.)

(Madhuresh Prasad, J.)