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THURSDAY

Court : 04
Item : 09
Matter : FMA
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IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE

FMA 531 of 2023
CAN 1 of 2023

Apurbalal Biswas
Vs.
Upendranath Biswas & Ors.

Mr. Prantick Ghosh, Advocate
Mr. Sumanta Das, Advocate
Mr. Prasad Bhattacharya, Advocate

.....for the Appellant

Mr. Surya Prasad Chattopadhyay, Advocate
Mr. Arjun Samanta, Advocate

.....for the Respondents

1. Without venturing to enter into the merit of the case, we noticed from the impugned order that the application for temporary injunction was disposed of by the Trial Court without recording any reason either in respect of a *prima facie* case having made out nor in respect of balance of convenience and inconvenience or irreparable loss and injury.
2. The impugned order would reveal that the first three pages thereof contain the facts pleaded in the pleadings of the contesting parties and the fourth page contains the respective contentions of the Counsels. The Court while passing the order of temporary injunction observed this:

“After perusal of the instant petition and its written objection together with the record and documents annexed therewith as also considering the submission made by the Ld. Advocate for the defendants and Ld. Advocate for the plaintiff as also considering the prima facie case, balance or convenience and inconvenience as well as question of irreparable loss and injury to the parties to the suit, the Court is of opinion that an

injunction order in the form of status quo can be passed in favour of the plaintiff till disposal of the suit for proper adjudication of the suit as also to avoid any future complication of the suit pending for partition by metes and bounds.”

3. It has been highlighted time and again that in an adversarial system of adjudication, it is a paramount duty of the Authority as well as the Court to record the reason. The reason being the heart and soul of an order cannot be undermined nor the Court can shirk its responsibility in recording the same.
4. A party has a right to know the reason based upon which his claim has been denied and if the order is bereft of reason, it is not only an improper discharge of duties entrusted upon the Court but dereliction of solemn duty to impart justice. Apart from the same, recording of reason would assist and facilitate the Appellate Court to understand the thought process based upon which the decision has been rendered for effective adjudication of the issues raised before it.
5. The Trial Court appears to have not followed such principles and surreptitiously jumped to the conclusion that the plaintiff has made out a *prima facie* case and balance of convenience and inconvenience as well as irreparable and injury would be suffered by him. It is the fundamental duty of the Court entrusted upon it to record reasons and having not done so, the order needs interference.
6. Accordingly, the order impugned in the instant appeal is set aside.
7. The matter is remitted to the Trial Court for

rehearing of the application for temporary injunction after giving opportunities to the contesting parties in securing the disposal of the same by recording reasons in accordance with law.

8. In the event, it is found that an *ad interim* order of injunction was operative before the disposal of the application for temporary injunction, the same is resurrected until the final order is passed in the said application.
9. We expect that the Trial Court shall dispose of the application within two weeks from the date of communication of this order.
10. In order to adhere the time limit fixed hereinabove, which is peremptory and mandatory, it is open to the Trial Court to refuse the adjournment to either of the parties unless necessitated by unforeseen or unavoidable circumstances.
11. With these observations, the appeal being **FMA 531 of 2023** and the connected application being **CAN 1 of 2023** are **disposed of**.

(Harish Tandon, J.)

(Madhuresh Prasad, J.)

