

62 **22.11.
2024**

Ct. No. 08

Ab

**FMA 801 of 2024
IA No. CAN 1 of 2024**

**Sumati Industrial Finance Limited
Vs.
Ideal Unique Realtors Private Limited and others.**

**Mr. Avik Banerjee,
Mr. Anirban Tarafdar,
Mr. Sahil Kabir.
... for the appellant.**

The instant appeal arises from an order dated 25th April 2024 passed by the learned Civil Judge (Senior Division), 4th Court at Alipore in Title Suit No. 563 of 2024 by which the Court declined to pass an ex parte ad interim order of injunction and directed the plaintiff/appellant to file requisites at once.

The plaintiff/appellant entered into two registered agreements of sale both dated 23rd September 2022 for purchase of two flats being Flat No. 5G and Flat No. 5H situated on the fifth floor of the structure to be constructed on the plot of land and claimed to have paid the entire consideration to the defendant no. 1/respondent no. 1.

The aforesaid agreements postulate the power to nominate and by virtue thereof, the agreements for sale were duly registered with the Registering Authority, which the plaintiff/appellant claims to have conferred right, title and interest in respect of the said property, as the entire consideration money had already been paid. It is further pleaded that on execution of the said agreements for sale dated 23rd September, 2022, further two agreements for sale in respect of the said property was entered into with closely held units of the plaintiff/appellant and on the basis of a common understanding between the parties, the entire amount

in that regard was paid and the receipts were issued in favour of those units.

It is further averred in the said plaint that a publication was made in the local newspaper indicating that the defendant no. 1/respondent no. 1 has defaulted in payment of the loan and the said property, which the respondent no. 1 intended to develop, was mortgaged with the said Bank. The said notice was issued in terms of the powers conferred under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (in short 'SARFAESI Act, 2002'), which the plaintiff/appellant construed to have encroached upon is right in respect of the aforesaid flats, which is apparently included within the said notice.

Even after being aware that the financial institution has already taken steps under the SARFAESI Act 2002, the present suit is filed seeking specific performance of an agreement for sale in respect of the aforesaid flats and an ex parte ad interim order of injunction was prayed for so that the aforesaid flats are not alienated and/or parted with possession to the third party.

The Trial Court after succinctly recording the facts discerned from the pleadings filed before it refused to pass an ex parte ad interim order of injunction and directed the notices to be issued upon the parties so that the prayer for temporary injunction can be decided in their presence.

At the outset it is sought to be contended that though the Court recorded the facts, but, in fact, there is no finding returned therein for the purpose of refusal to pass an ex parte ad interim order of injunction. Order XXXIX Rule 3 of the Code of Civil Procedure postulates that the Court while granting injunction, which would be defeated by delay, should do so after

directing notice of the application to be given to the opposite party. However, the proviso appended to Rule 3 of Order XXXIX bestowed power upon the Court to grant injunction without giving notice to the other side provided the Court finds that the object of granting injunction would be defeated by delay and shall record the reasons in this regard.

What is *sine qua non* to the aforesaid provision is that it is imperative on the part of the Court to record reasons at the time of passing an ex parte ad interim order of injunction and the converse does not appear to be the spirit of the aforesaid provision. The normal rule emanating from the aforesaid provision is laudable and it appears that the Court must direct notice to the other side before it embarks its journey on the periphery thereof and the exception is carved out that if the delay would defeat the very purpose of granting injunction, the Court may do so provided it record the reasons in this regard.

We, thus, do not find that in absence of any proper reasons having provided would indulge the order susceptible to be interfered with by the Trial Court.

Be that as it may, taking into account the pleadings before us and the nature of injunction as sought for, we do not find that there is an extreme exceptional circumstance, which invite the ex parte ad interim order of injunction to be passed.

Since the Court has directed the notices to be issued upon the other side, we expect that the Court will consider the prayer in their presence. Since the requisites could not be deposited because of filing of the instant appeal, we permit the appellant to put in the requisites in the Trial Court within six days from date.

It is expected that upon filing of the requisites, the Trial Court shall ensure the service upon the respondents and upon service of the notice; endeavour

shall be made to dispose of the said application for temporary injunction as expeditiously as possible.

None of the observations made herein above, touching upon the merit of the claim, shall have any persuasive impact at the time of considering the prayer for temporary injunction.

With these observations, the appeal and the connected application are disposed of.

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

(Harish Tandon, J.)

(Prasenjit Biswas, J.)