

Jainco Projects (I) Limited
Vs.
Sabala Surandhan Udyog Pvt. Ltd. and others.

Mr. Amritam Mondal,
Mr. Abir Das,
Mr. Dwaipayan Banerjee.**... for the appellant.**

The instant appeal arises from an order dated 10th August 2023 by which the Trial Court declined to pass an *ex parte* ad interim order of injunction without serving a notice upon the defendants/respondents. It further appears that a show-cause was also directed to be issued against the defendants/respondents as to why the prayer for temporary injunction shall not be allowed.

Though the appeal was filed on 13th September 2023 but it does not appear that any immediate steps were taken citing urgency. Order XXXIX Rule 3 of the Code of Civil Procedure postulates that the Court should be slow in passing an interim order without serving a notice upon the defendants/respondents. Therefore, the normal rule, as it appears from the aforesaid provision, is that the Court should direct the notice to be served upon the defendants/respondents before passing an interim order. However, an exception is carved out that if the delay would defeat the very purpose of injunction, there is no fetter on the part of the Court to pass an *ex parte* ad interim order of injunction but should record the reasons therefor.

A considerable period has elapsed since the date of refusal to pass an *ex parte* ad interim order of injunction and according to the learned Advocate for the plaintiff/appellant, the other sides have not committed any mischief during such interregnum period, we do not

think that it would sub-serve the justice in interfering with the impugned order.

According to us, it would be proper if the application for temporary injunction filed before the Trial Court is disposed of on merit in presence of both sides. We have been given to understand that despite the order for putting the requisites, no steps have been taken in this regard as the plaintiff/appellant chose to challenge the impugned order before this Court.

We, therefore, extend the time to put in the requisites for effecting service upon the defendants/respondents by fortnight from date. On completion of service in terms of the provisions contained under Order XXXIX Rule 3 of the Code, liberty is granted to the plaintiff/appellant to pray for an interim protection in the event the situation so warrant. The Trial Court shall consider such prayer and pass an order in accordance with law.

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

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

(Harish Tandon, J.)

(Madhuresh Prasad, J.)

