

11 **05.11.
2024**

Ct. No. 08

Ab

**FMAT 351of 2024
IA No. CAN 1 of 2024**

**Eastern Paper Mills Ltd. and another
Vs.
Mira Bose and others.**

**Mr. Debasish Kundu,
Mr. Atarup Banerjee,
Mr. Arindam Sen,
Mr. Rwitendra Banerjee,
Mr. Sourav Basu,
Mr. Samit Bhanja .**

... for the appellants.

**Mr. Srijeeb Chakraborty,
Mr. Pinak Kumar Mitra,
Ms. Subhaswita Ghosh,
Mr. Souradeep Das.**

... for the respondents.

It is pointed out by the Counsel appearing for the respondent nos. 2 to 5 that the respondent no. 1 is dead and, therefore, appropriate steps are required to be taken before the Court proceeds to dispose of the instant appeal at the admission stage.

We noticed that the heirs of the respondent no. 1 are already on record being the respondent nos. 2 to 5 and, therefore, there is no question of abatement or bringing the heirs on record by way of substitution. Since the heirs of the deceased respondent no. 1 are already on record, her name is deleted from the category of the respondent no.1.

Let the necessary amendment be made by the department.

We have taken up the appeal as we find that the scope of consideration is limited for the reason that the instant appeal is filed assailing the order by which the Trial Court refused to pass an ex parte ad interim order of injunction.

We noticed from the findings recorded in the impugned order wherein the Court succinctly recorded

the case made out by the plaintiffs/appellants yet refused to pass an ex parte ad interim order of injunction solely on the ground that one suit against the same parties is pending before the Court of learned Civil Judge (Junior Division), Bidhannagar.

The instant suit is filed by the plaintiffs/appellants claiming right, title and interest in respect of the subject property on the strength of deed of sale executed as far back as in the year 1958. The allegation runs into several pages pertain to the invasion of the right, title and interest of the plaintiffs/appellants as well as the interference with the possession thereof. We are unable to accept the proposition as propagated in the impugned order that because of the pendency of one suit between the same parties, the ex parte ad interim order of injunction cannot be passed.

Both the parties have claimed their respective right, title and interest in respect of the property. It is specifically averred in the plaint that the deed, which forms the alleged basis of the right, title and interest in respect of a suit property claimed by the contesting respondents, is an outcome of forgery as no such deed is found in existence in the record of the registering authorities. In fact, the letter issued by the District Registrar is sought to be relied upon by way of supplementary affidavit in the instant appeal.

There was a categorical averment made in the plaint as well as the injunction application in this regard and the support appears to have been taken on the basis of such letter issued by the competent authority subsequently evincing that the deed as relied upon by the contesting defendants/respondents is not a deed, which is registered under the said number and volume.

We are conscious of the proposition of law that the Court should bear in mind the distinction between a prima facie title and prima facie case. Though the prima facie title appears in favour of the plaintiffs/appellants

yet while passing the order of injunction, the Court must confine its consideration within the ambit of a prima facie case.

Our attention is drawn to the orders passed in the earlier suit instituted by the contesting respondents wherein an ex parte ad interim order of injunction was passed restraining the present appellants from disturbing their possession in respect of a property described in the schedule appended in the plaint therein.

The plaintiffs/appellants appeared after receiving the notice and filed an application under Order XXXIX Rule 4 of the Code of Civil Procedure for vacation, variation and modification of the said ex parte ad interim order of injunction. Since the ex parte order of injunction was for a limited duration, it was extended from time to time.

Our attention is drawn to the order dated 5th August 2024 passed in the said suit, which is annexed at page 276 of the instant application for injunction, wherefrom it appears that even prior thereto no attempt was made on behalf of the contesting respondents herein to apply for ex parte ad interim order of injunction. Though the application for extension of the ad interim order was filed on the said date yet it does not appear that the Court extended the same.

The sum and substance gathered from the aforesaid fact that there is no subsisting of ad interim order of injunction against the present plaintiffs/appellants. Mere institution of a suit does not create any embargo in passing the interim order for protection of the right as alleged. We are conscious that at the ad interim stage the Court must confine its scrutiny on the averments made in the plaint as well as the temporary injunction and in the event the Court finds prima facie case is made out, which warrants immediate protection to be extended to the plaintiffs/appellants, there is no fetter on the part of the

Court to pass such protective order.

There appears to be a serious dispute on the possession and, therefore, at the ex parte stage, we do not intend to delve deep into the aforesaid aspect. We are convinced with the materials available before us that the deed, which is relied upon by the respondents, prima facie, appears to be non-existent and, therefore, if any transaction is made on the basis thereof, it may invite a multiplicity of the proceedings and, therefore, there is no impediment in our part to pass an ad interim order of injunction to protect the right, title and interest of the parties pending the application for temporary injunction.

Accordingly, the defendants/respondent nos. 2 to 5 are restrained from dealing with and/or creating any third party interest and/or encumbering, transferring and/or selling the scheduled property till the disposal of the application for temporary injunction.

Since the contesting respondents have entered appearance and the copy of the stay application filed in the instant appeal has already been served upon them, which, in our opinion, are the principal defendants, which contains the plaint as well as in the application for temporary injunction, we permit them to file affidavit-in-opposition to the application for temporary injunction before the Trial Court within two weeks from date; reply thereto, if any, shall be filed within a week thereafter. The learned Judge in the Trial Court is requested to dispose of the application for temporary injunction within two weeks from the date of expiry of the period for exchange of affidavits, as indicated herein above, in accordance with law.

For abandon precaution we hereby made clear that the consideration at the time of passing the ad interim order of injunction is different than at the time of disposal of the application for temporary injunction and, therefore, none of the findings made herein above shall have any persuasive impact at the time of disposing of

the application for temporary injunction on merit.

With these findings, the appeal and the connected application being CAN 1 of 2024 are disposed of.

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

(Harish Tandon, J.)

(Prasenjit Biswas, J.)