

24th July, 2024
(D/L No.11&12)
Ct. No.4
(SKB)

FMAT 479 of 2023
With
CAN 1 of 2023

With

FMAT 198 of 2024
With
CAN 1 of 2024

Manoj Mondal
Versus
Taniya Chakraborty and others

Ms. Juin Dutta Chakraborty,
Mr. Bidan Modak
... for the appellant.

Mr. Kushal Chatterjee,
Mr. Prasayan Mukherjee,
Mr. Oishik Chatterjee
... for the respondent no.1.

1. In a suit for partition, an ad interim order has been passed giving rise to the present appeal. The ad interim order was operative only upto 08.09.2023. The same was subsequently extended by orders dated 11.08.2023 and 15.05.2024 which led to filing of another appeal bearing no. FMAT 198 of 2024 challenging the extension orders.
2. It is submitted by the learned counsel for the appellant that the ad interim order has been passed in violation of Order 39 Rule 3.

3. The court, while passing the order, has not recorded any existing urgency requiring passing of such order even prior to issuance of notices.
4. The learned counsel for the respondents, on the other hand, submits that the initial ad interim order under appeal in FMAT 479 of 2023 itself was limited in duration and lapsed on 08.09.2023. A conjoint consideration of the pleadings on record of the two appeals will reveal that after passing of the order, the present appellant was represented in the proceedings by a counsel whereafter the matter was adjourned on two dates for filing W.S. and on failure to file W.S., the court has directed the proceedings to proceed *ex parte*.
5. It is, therefore, submitted that no case is made out for interference with the order. In view of these developments, the applications and appeals itself have become infructuous.
6. The conduct of the present appellant is a vital aspect to be considered and since the appellant has failed to avail the opportunities for filing of W.S., this court may not pass any orders in favour of the appellant.
7. At this juncture, the learned counsel for the appellant submits that the appellant shall take appropriate steps in the proceedings before the

trial court wherein the ad interim order after extensions is operative only till 31.07.2024.

8. In view of such submissions of the parties and since the next date is fixed on 31st July, 2024, leaving the appellant/(s) to avail remedies and take steps in the proceedings, we find that nothing survives in the present appeals and keeping the same pending will be an exercise of futility.
9. The appeals and applications are thus dismissed with liberty to take steps before the trial court as recorded above.
10. Interim order/s, if any, stand vacated.
11. The pending applications, if any, are also disposed of.

(Madhuresh Prasad, J.)

(Supratim Bhattacharya, J.)