

**136 19.12.
2024**

Ct. No. 08

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**FMAT 384 of 2024
IA No. CAN 1 of 2024**

**Sri Joygopal Mondal
Vs.
Smritirekha Basu Sarkar and others.**

Mr. Md. Younush Mondal.
... for the appellant.

**Mr. Sibasis Ghosh,
Mr. Sailesh Kumar Gupta.**
... for the respondent nos. 2,3,5,6 & 8-10.

**Mr. Rabindra Narayan Dutta,
Mr. Arkoday Mukherjee.**
... for the respondent nos. 11 to 14.

It appears that before an application for probate is taken out, two other regular suits were instituted by the appellant in which an application for temporary injunction was filed. The Trial Court recorded the findings that in both the suits, the prayer for temporary injunction has been refused, but the learned Counsel for the appellant says that such fact is incorrectly stated therein as the injunction, which was subsequently vacated, has been restored.

Be that as it may, going by the statement of the appellant, there is a subsisting protective order passed in one of such proceeding and it is not desirable that injunction of such should be passed in each and every litigation, which are either pending or filed subsequent thereto.

The probate application has been converted into a contentious cause and we are given to understand that the evidence in support of the application as well as the objection raised by the objector is over and the said proceeding is fixed for final hearing on 7th January 2025. Though it is alleged by the respondents that whenever the date is fixed for hearing of the said contentious

cause, adjournment is sought and, in fact, the applications are taken out for injunction just to forestall the final disposal of the said proceeding, as we have indicated that there is a protective order operating in the field and, therefore, the instant application is only to delay the disposal of the probate proceeding and there is no infirmity on the part of the Trial Court to reject the application for temporary injunction.

The appeal and the connected application being CAN 1 of 2024 are dismissed.

We hope and trust that the Probate Court shall take up the matter so fixed on the date and shall refuse unnecessary adjournments to either of the parties unless necessitated by unforeseen and unavoidable circumstances.

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

(Harish Tandon, J.)

(Prasenjit Biswas, J.)