

27.02.2024

Court : 04
Item : 07
Matter : FMAT
Status : DO
Bench ID : 266176
Transcriber : NANDY

**IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE**

**FMAT 480 of 2023
with
CAN 1 of 2023**

Manor Sales & Marketing LLP
Vs.
Prasanna Kumar Roy & Anr.

**Mr. Suddasatva Banerjee, Advocate
Mr. Chayan Gupta, Advocate
Mr. Pourush Bandyopadhyay, Advocate
Ms. Rituparna Chatterjee, Advocate**

.....for the Appellant

1. Despite several attempts having made to serve the respondents, there is no appearance on their behalf. The matter is taken up for final disposal as the scope of the instant appeal appears to us being limited, there is no point in keeping the appeal pending before this Court.
2. The instant appeal arises from an order passed by the Trial Court refusing to extend the *ad interim* order of injunction passed in connection with the said suit solely on the ground that the Trial Court is denuded of power to extend the order passed by the High Court.
3. The appellant filed a suit for specific performance of an agreement/MoU for sale of immoveable property and took out an application for temporary injunction as the respondents have published an advertisement in a website dedicated for the purpose of sale and purchase of immoveable properties and therefore, they should be restrained from taking any step for alienating, transferring and/or selling of the property pending the said suit.

4. The application for temporary injunction was moved for an *ex parte ad interim* order of injunction which was refused by the Trial Court and assailing the said order, the appellant preferred FMAT 328 of 2023 before this Court. While admitting an appeal on 03.08.2023, this Court passed an *ad interim* order of injunction restraining the respondents to accept any offer in terms of the advertisement mentioned at page 95 of the stay application filed therein. Apart from the same, the Division Bench of this Court also restrained the respondents from alienating, transferring and/or encumbering the suit premises for a period of two weeks from date or until further order, whichever is earlier.
5. After the service was attempted, the matter appeared on 10.08.2023 and the Division Bench was satisfied that the respondents avoiding the service and disposed of the said appeal by extending the operation of the interim order passed on 03.08.2023 by eight weeks from date with a rider that it would be open to the Trial Court to pass any order in connection with the injunction application, whichever is earlier.
6. Apart from the same, the Court also directed the appellant to comply certain direction relating to the service to be effected upon the respondents which according to the appellant has been religiously followed with. Since the application for injunction could not be disposed of within the extended period of *ad interim* order of injunction, an application for extension of the said interim order was taken out which is rejected by the Trial Court on the ground indicated hereinabove.

7. Without venturing to go deep into the aforesaid aspect, we hasten to add that the Division Bench was conscious that at the time of extending the *ad interim* order of injunction the application for temporary injunction would be disposed of within such time. However, the Division Bench gave liberty to the Trial Court to pass any order as the circumstances so warrant which cannot be construed that the Trial Court is denuded of any power to extend the *ad interim* order of injunction. Even the Division Bench bestowed power upon the Trial Court to vacate the interim order, in the event, the compliance as directed therein, has not been made by the appellant.
8. Considering the tenet of the aforesaid order, we do not find that there is any difficulty on the part of the Trial Court to extend the *ad interim* order of injunction upon recording reasons. If the Trial Court is conferred with the power to vacate the *ad interim* order of injunction passed by the Division Bench of this Court, we do not find any reasonable logic into the mind of the learned Judge that it cannot extend such interim order, in the event, the application for temporary injunction could not be disposed of within a period of its operation.
9. At the time of admitting the instant appeal we re-imposed the interim order which is continuing till date.
10. In view of the findings made hereinabove, we do not find that the manner in which the Trial Court rejected the application for extension of interim order, is proper and legally sustainable.
11. The order impugned is thus **set aside**.

12. The Trial Court is directed to dispose of the application for temporary injunction within four weeks from the date of communication of this order provided the Trial Court is satisfied on the service having effected upon the respondents in terms of the order passed by the earlier Division Bench.
13. The interim order granted by this Court on 11.10.2023 shall continue till the disposal of the application for temporary injunction or until further order as may be passed by the Trial Court.
14. The appeal being **FMAT 480 of 2023** and the connected application being **CAN 1 of 2023** are **disposed of.**

(Harish Tandon, J.)

(Madhuresh Prasad,
J.)