

137 **19.12.
2024**

Ct. No. 08

ab

**FMAT 395 of 2024
IA No. CAN 1 of 2024**

**Charu Diesels LLP and others
Vs.
M/s. E. L. Properties Private Limited and others.**

**Mr. Satadeep Bhattacharyya,
Mr. UttamSharma,
Ms. Vrinda Kedia.**

... for the appellants.

**Mr. Suman Kumar Dutt,
Mr. Dwaipayan Basu Mallick,
Mr. Arkaprava Sen,
Mr. Sayantan Kar.**

... for the respondent no. 1.

The instant appeal arises from an order dated 7th September 2024 passed in Title Suit No. 1199 of 2024 by the learned Civil Judge (Senior Division), 2nd Court at Alipore by which an ad interim order restraining the defendants/appellants to deal with and/or dispose of and/or creating any third party interest in respect of the suit properties for a limited period is passed.

The plaintiff/respondent no. 1 has filed a suit for recovery of possession, perpetual injunction, damages, recovery of arrear monthly rent and recovery of arrear of proportionate Municipal Corporation charges from the defendants or each of them and in such suit, an application for temporary injunction was taken out alleging that despite the jural relationship continued, they are trying to create a third party interest in respect of the property.

We find that upon service having effected under Order XXXIX Rule 3 of the Code of Civil Procedure, the appellants entered appearance and filed written objection. The application for temporary injunction is fixed on 21st January 2025.

It would not be desirable to entertain the instant

appeal as any observations made, though prima facie, shall have an impact at the time of final disposal of the application for temporary injunction.

Since the ad interim order of injunction is operating for a considerable period of time and the fact that the application for temporary injunction is otherwise ready for final disposal, we feel that justice would be sub-served if the application for temporary injunction is decided on the date so fixed.

We, therefore, request the learned Judge in the Trial Court to take up the application for temporary injunction on the date so fixed and shall dispose of the same on the said date; in the event and for unavoidable reason it could not be disposed of on the said date, endeavour shall be shown to dispose of the same within one week therefrom.

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

For abandon precaution it is hereby made clear that the observations made herein above, if incidentally and accidentally touches upon the merit and/or demerit of the case, shall not have any persuasive impact at the time of disposal of the application for temporary injunction on merit.

(Harish Tandon, J.)

(Prasenjit Biswas, J.)

