

07.03.2024
THURSDAY

Court : 04
Item : 227-228
Matter : FMAT
Status : DO
Bench ID : 266176
Transcriber : NANDY

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

FMAT 510 of 2023
with
CAN 1 of 2023
&
FMAT 353 of 2023
with
CAN 1 of 2023

Md. Shakil & Ors.
Vs.
Md. Gyasuddin & Ors.

Mr. Saptangsu Basu, Senior Advocate
Mr. Partha Chakraborty, Advocate
Ms. Poulomi Dutta, Advocate

.....for the Appellants

Mr. Probal Kumar Mukherjee, Senior Advocate
Mr. Sanjay Mukherjee, Advocate
Mr. Amit Nath, Advocate
Mr. Arghadip Das, Advocate

.....for the Respondents

1. The aforesaid two appeals have been filed assailing the *ad interim* order of injunction and the extension being made, not only on the factual matrix but on a legal proposition which inhibits the plaintiffs from seeking an order of injunction, be it *ad interim*, *interim* or extension thereof.
2. It is a suit for specific performance of an alleged agreement for sale which is instituted by the plaintiffs/respondents and an application for temporary injunction was pressed for an *ex parte ad interim* order of injunction which, in fact, has been passed by the Trial Court. Though several points have been taken in the instant appeal by the contesting defendants, but it appears that the

Court was extending the interim order, and the next date is fixed on 15.04.2024.

3. In the meantime, direction is also passed upon the contesting defendants to file their affidavits. Since the application for temporary injunction has been fixed in a closed proximity of time, it would simply delay the disposal of the application for temporary injunction, if the appeals are allowed to remain pending in this Court.
4. Even the Counsel appearing for the respective parties echoed the same views and submitted that if the application for temporary injunction is disposed of at an earlier it would subserve justice. In such view of the matter, the instant appeals are disposed of with the following directions: -

- i) The appellant shall file the affidavit-in-opposition to an application for temporary injunction by 15.03.2024. Reply, if any, shall be filed by 22.03.2024.*
- ii) It appears that an application under Order VII Rule 11 of the Code of Civil Procedure filed by the appellant is also pending and therefore, the plaintiff/respondent is also permitted file affidavit-in-opposition to the said application by 15.03.2024 and reply, if any, shall be filed by 22.03.2024.*
- iii) Though the next date is fixed for hearing of an application under Order VII Rule 11 of the Code of Civil Procedure, but the Trial Court shall take up the application for temporary injunction on the said date.*
- iv) Since the instant direction is passed in presence of the parties, none of the parties shall be able to take the plea that the said date is not fixed for hearing of an application for temporary injunction.*
- v) None of the parties shall seek for unnecessary adjournments on the date said date and endeavour shall be shown by the learned Judge to dispose of the same within a fortnight therefrom by passing a reasoned order.*

5. With these observations, the appeals being **FMAT 510 of 2023** and **FMAT 353 of 2023** and the connected applications are **disposed of**.
6. For abundant precaution, it is hereby made clear that all the points available to the respective parties including the points taken in the instant appeal are kept open and if taken by either of the parties, shall be decided by the Trial Court, in accordance with law.

(Harish Tandon, J.)

(Madhuresh Prasad, J.)