

19.03.2024

TUESDAY

Court : 04
Item : 26
Matter : FMA
Status : DISMISSED
Bench ID : 266176
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**IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE**

FMA 304 of 2024

with

CAN 1 of 2023

Anju Mondal & Anr.

Vs.

Ayub Ali Tarafdar & Ors.

Mr. Arnab Roy, Advocate

Mr. Satyam Mukherjee, Advocate

Ms. Sayani Ahmed, Advocate

Mr. Purnendu Shankar Ghosh, Advocate

.....for the Appellants

1. Though we do not intend to interfere with the impugned order but we must make certain observations which are relevant for the purpose of recapitulation of law applicable in this regard. The impugned order does not reflect any independent findings having made by the learned Judge while declining to pass an *ex parte ad interim* order of injunction.
2. We are conscious of the provisions contained under Order XLI Rule 3 of the Code of Civil Procedure which postulates that the Court, before granting an injunction, direct the notice of application to be given to the opposite party but an exception is carved out in the event, the Court finds that an object of granting injunction would be defeated by delay, there is no fetter on the part of the Court to pass an *ex parte ad interim* order of injunction but the proviso attached thereto somehow controlled the exercise of power of the Court in the sense that the Court must record

reasons for forming an opinion that it is a fit case where the delay would defeat justice.

3. Though there is no mandate provided in the statute for recording reasons while declining to pass an *ex parte ad interim* order of injunction but the importance of recording reason in a judicial dispensation has been held to be a hallmark of imparting justice to the parties and its dispensation is always discouraged.
4. The Court must record reasons while granting or declining the relief as the litigant would be able to know the reason for such decision. Apart from the same, if the reasons are recorded, it would also assist the Appellate Court in assessing the decision making process and the correct marshalling of the facts and the law in such given situation.
5. We invited the learned Counsel for the appellant to make submission on the facts and it appears to us that the relief to protect the possession was sought in an application for temporary injunction simplicitor on the basis of the averments made in the application but there was no corroborative documentary evidence produced in support thereof.
6. Though it is a suit for partition and separation of shares, in such situation without affording an opportunity to the other side to disclose the stand, more particularly, whether the plaintiff is a co-sharer/co-owner or is in possession in such capacity or otherwise, it would not be appropriate or proper to pass an *ad interim* order of

injunction. Apart from the same, the refusal to passe an *ex parte ad interim* order of injunction was passed as far back as on 17.10.2023, considerable time has elapsed in the meantime and the learned Counsel for the appellant is unable to apprise the Court whether any requisite has been put in, in the Trial Court as directed.

7. In such view of the matter, we do not think admitting the appeal would sub-serve the justice nor we find that the plaintiff is entitled to get the appeal admitted.
8. Therefore, the appeal being **FMA 304 of 2024** is thus **dismissed** under Order XLI Rule 11 of the Code of Civil Procedure.
9. However, dismissal of the instant appeal shall not prevent the appellant to take appropriate steps as directed in the impugned order.

(Harish Tandon, J.)

(Madhuresh Prasad, J.)

