

(2022) 02 DEL CK 0157

In the Delhi High Court

Case No : First Appeal From Order No. 40 Of 2022, Civil Miscellaneous
Application No. 8846-8847 Of 2022

Aditya Dave & Ors

APPELLANT

Vs

M/S Trans Asian Industries Expositions Pvt. Ltd & Anr

RESPONDENT

Date of Decision : 18-02-2022

Acts Referred:

Code Of Civil Procedure, 1908 — Order 39 Rule 1, Order 39 Rule 2

Citation : (2022) 02 DEL CK 0157

Hon'ble Judges : Sanjeev Sachdeva, J

Bench : Single Bench

Advocate : Saurabh Prakash, Utsav Jain, Anant Aditya Patro, Lakshay Dhamija,
Richa Dhawan

Final Decision : Disposed Of

Judgement

Sanjeev Sachdeva, J

1. The hearing was conducted through video conferencing.
2. Appellant impugns order dated 08.02.2022, whereby the application filed by respondent No.1 under Order XXXIX Rule 1 and 2 has been disposed of.
3. Learned counsel for appellants submits that the application was disposed of without giving any opportunity to file a reply. He further submits that the trial court has not even considered the three basic principles for grant of ad-interim injunction i.e., prima facie case, balance of convenience and irreparable loss and injury, and has disposed of the application finally.
4. Issue notice. Notice is accepted by learned counsel for respondent No.1 as also by learned counsel for respondent No.2.
5. With the consent of parties, the appeal is taken up for final disposal today.
6. Contention of learned counsel for appellants is that the notice of the said

application was received on 07.02.2022 for a hearing on 08.02.2022, when the counsel had prayed for an adjournment to file a reply. However, no opportunity to file a reply was granted. It is further contended that there are disputes with regard to the limitation as well as the maintainability of the suit and the same have not been considered by the trial court while disposing of the application.

7. Perusal of the impugned order shows that that no opportunity to file a reply was granted to the appellant. Further, the court has not returned any finding on the question of prima facie case, balance of convenience, irreparable loss and injury likely to be caused to the plaintiff.

8. In that view of the above, the impugned order dated 08.02.2022 requires a modification to the extent the application under Order 39 Rules 1 & 2 shall not be treated as disposed of but shall be treated as pending on the file of the trial court.

9. Appellant shall file a reply to the application within one week. Rejoinder within two weeks thereafter. Thereafter, the trial court shall consider the application afresh and pass a fresh speaking order.

10. The questions of limitation as well as maintainability are left open. However, the objections shall be considered by the trial court for forming a prima facie opinion on the merits.

11. The interim injunction granted by the Trial Court on 08.02.2022 shall continue till a final order is passed by the Trial Court on the said application.

12. It is clarified that nothing stated herein shall amount to expression of opinion on the merits of the contentions of either party and the trial court shall dispose of the application without being influenced by anything stated herein on merits.

13. Copy of the order be uploaded on the High Court website and be also forwarded to learned counsels through e-mail by the Court Master.