

Party Name : UJJWAL KR. SAHA Vs DIPAK MAJUMDER

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THE HONBLE MR JUSTICE U. B. SAHA

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The instant revision petition is filed under Article 227 of the Constitution of India for quashing/cancelling/setting aside the impugned order dated 05.02.2015 passed by the learned Addl. District Judge, Court No. 4, West Tripura, Agartala in Misc. Appeal No. 11 of 2014 whereby and whereunder the learned Addl. District Judge restrained the petitioner, who is the defendant in TS 46/2014, by way of temporary prohibitory injunction to proceed with the balance of the construction work of the building in question either by himself or through any other agent till the disposal of the main suit.

Heard Mr. SM Chakraborty, learned senior counsel assisted by Mr. BN Majumdar, learned counsel for the petitioner as well as Mr. S Mahajan, learned counsel for the respondent.

The grievance of the petitioner is that on 03.12.2012, the petitioner Sri Ujjawal Kr. Saha entered into an agreement with the respondent-defendant who is a Developer/Contractor for the construction of a residential building of the dimension G+2 of which the respondent would be the owner. In terms of the agreement, the respondent could not complete the work within the stipulated period, so the petitioner took up the matter with the defendant and ultimately, the defendant was allowed another three months time to complete the work but within the said period also the defendant could not complete the work. The petitioner, therefore, vide his letter dated 22.03.2014 cancelled the agreement for construction with the respondent w.e.f. 22.03.2014. Being aggrieved by the said decision of the petitioner, the respondent herein filed a suit for declaration to declare the notice dated 22.03.2014 as void, illegal and contrary to law, along with some other consequential reliefs. The respondent has also filed a Misc. Case under Order 39 Rule 1 & 2 of the Code of Civil Procedure for granting temporary injunction restraining the respondent from starting the construction work either by himself or any other agency. The Misc. Case was numbered as Misc. Injunction 28/2014 and the learned Civil Judge, Sr. Division, Court No. 3, Agartala initially passed an interim injunction in favour of the respondent on 13.06.2012 but after hearing both sides the temporary injunction, which was granting on 13.06.2014, was vacated vide order dated 20.08.2014.

Being aggrieved by and dis-satisfied with the order dated 20.08.2014 the respondent-plaintiff preferred appeal under Order 43 Rule 1(r) before the learned Addl. District Judge, Court No. 4. The said appeal was registered as Misc. Appeal 11 of 2014. The learned Addl. District Judge, Court NO. 4 after hearing the parties passed an ad-interim injunction on 19.11.2014 and the said order has been challenged by the present petitioner before this Court in CRP 90 of 2014.

This Court by its order dated 17.12.2014 disposed of the aforesaid revision petition restraining the petitioner, defendant in the suit, to add any value to the construction that has been purportedly taken up in pursuance of the agreement dated 22.04.2013.

Thereafter, the learned Addl. District Judge after hearing the parties passed the impugned order dated 05.02.2015 wherein the learned Appellate Court restrained the petitioner-defendant by way of temporary prohibitory injunction to proceed with the balance of the construction work of the building in question either by himself or through any other agent till the disposal of the main suit. Hence, the instant revision petition.

When the matter is taken up for admission hearing, it has been agreed upon between the learned counsel for the parties that the plaintiff-respondent will be allowed to take the measurement regarding the construction done by him till termination of the contract through his engineer namely, Sri Pradip Kr. Bhattacharji, Ex-Superintending Engineer in presence of the defendant-petitioner's representative Engineer namely, Sri Satya Sanatan Das, a Civil Engineer, and after taking the measurement, the engineers would furnish the measurement sheets to the parties who would subsequently place the matter before the trial court and the trial court would then proceed accordingly, so far as the relief sought for by the plaintiff-respondent herein is concerned and the injunction order dated 05.02.2015 passed by the learned appellate court shall remain in operation till the measurement sheet is submitted before the learned trial court.

Ordered accordingly.

The entire exercise of measurement shall be completed within a period of three weeks and before going for the measurement the plaintiff shall inform regarding the date and time of measurement to the defendant, five days in advance, and if the said date is not suitable to the defendant then the date shall be fixed mutually.

With the aforesaid order, the instant revision petition is disposed of.