

09.12.2021
(S/L-30)
Ct.-18
(Susanta)

(Via Video Conference)

C.O. 816 of 2012
With
I.A. No CAN 1 of 2020 (Old CAN 3844 of 2020)
I.A. No CAN 2 of 2020 (Old CAN 3846 of 2020)
I.A. No CAN 3 of 2020 (Old CAN 3847 of 2020)

Dilip Kumar Sen
-Vs-
M/s. P.S. Enterprises & Ors.

Mr. Kishore Mukherjee,
..... For the Petitioner.

Mr. Gouranga Kumar Das,
..... For the Opposite Party No.1(a)

Re: **I.A. No CAN 1 of 2020 (Old CAN 3844 of 2020)**
Re: **I.A. No CAN 3 of 2020 (Old CAN 3847 of 2020)**

The application for restoration of the revisional application dismissed for default on December 03, 2019 and the application for condonation of delay thereof are taken up together for consideration.

Perused the applications, sufficient explanations have been offered justifying the delay in filing the application for restoration. It further appears that petitioner was prevented by sufficient cause for not appearing before this Court when the matter was called on for hearing.

The delay in filing the application for restoration is condoned. The order dated

December 3, 2019 is recalled. The C.O. 816 of 2012 is restored to its original file and number.

The interim order passed on March 18, 2012 is also restored.

The application being I.A. No CAN 1 of 2020 (Old CAN 3844 of 2020) for condonation of delay and application being I.A. No CAN 3 of 2020 (Old CAN 3847 of 2020) for restoration are thus disposed of without any order as to costs.

C.O 816 of 2012

The revisional application under Article 227 of the constitution of India is directed against the order dated March 6, 2012 passed by the learned District Judge-in-Charge, Alipore, District-24-Parganas (South) in Misc. Appeal No. 116 of 2012 affirming the order dated February 18, 2012 passed by the 1st Court of learned Civil Judge (Junior division), Alipore, District-24-Parganas (South) in Title Suit No. 82 of 2012.

The learned Trial Judge refused to pass an ad interim order of injunction on an application filed by the petitioner under Order XXXIX Rules 1 & 2 of the Code of Civil Procedure.

The petitioner aggrieved by the said order has preferred the connected Miscellaneous Appeal.

The Appeal Court below by the order impugned has also refused the prayer of the petitioner for an ad interim order of injunction.

Mr. Mukherjee, learned advocate appearing on behalf of the petitioner submits that the learned Trial Judge may be directed to dispose of the injunction application expeditiously and pending such disposal the ad interim order of injunction passed by the Co-ordinate Bench at the time of admission of the present revisional application may be kept in force.

Learned advocate for the opposite parties also prays for expeditious disposal of the injunction.

The Co-ordinate Bench while admitting the present revisional application on March 15, 2012 passed the following order:-

“ from the averments made in the plaint as well as in the injunction application, prima facie it appears that after the completion of the construction in terms of the said development agreement, the said developer has sold out the portion allotted to them in terms of the said agreement and also handed over the possession of the remaining portion to the plaintiff-petitioner.

Thus, this Court finds that a prima facie case has been mad out.

The opposite parties are restrained from creating any obstruction and disturbance in peaceful possession and enjoyment of the suit rooms till the disposal of the revisional application”.

There is nothing on record requiring variation and/or modification of the said order. Let the said order continue till the disposal of the application under Order XXXIX Rules 1 and 2 of the Code filed by the petitioner in the connected suit.

The learned Trial Judge is requested to expedite the disposal of the said application without granting any unnecessary adjournment to either of the parties.

In view of the order passed in the present revisional application there is no necessity of keeping the connected Miscellaneous Appeal No. 116 of 2012 pending, same may be treated as disposed of.

C.O. 816 of 2012 is thus allowed without any order as to costs.

In view of the disposal of the revisional application the connected application for urgency being I.A. No CAN 2 of 2020 (Old CAN 3846 of 2020) has become infructuous and is disposed of accordingly.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties subject to compliance with all requisite formalities.

(Biswajit Basu, J.)