

02,SL,Ct.05.
09.09.2020
AJ.

C.O. 1179 of 2020
C.A.N. 1 of 2020 (Old C.A.N. 5506 of 2020)
(Through Video Conference)

Oswal Manufacturers Private Limited
-Vs-
Aslam Sk. & Ors.

Mr. Jaydip Kar,
Ld. Sr. Advocate,
Mr. Indranil Roy,
Mr. D. Choudhury,
Ms. S. Choudhury.
.....for the petitioner.

Mr. Sourav Mukherjee,
Mr. Kaushik Choudhury.
.....for the opposite party no.1.

Mr. Habibur Rahaman,
Mr. Arijit Sarkar,
Md. Salauddin Seikh,
Mr. Maidul Islam Kayal.
.....for the opposite party no.2.

The revisional application under Article 227 of the Constitution of India is at the instance of defendant no.1 in a suit for partition and is directed against Order No.2 dated February 29, 2020, Order No. 4 dated March 24, 2020 and Order No. 5 dated June 10, 2020 passed by the learned District Judge-in-Charge, Alipore, South 24-Parganas in Miscellaneous Appeal No. 53 of 2020 arising out of the order dated February 10, 2020 passed by the Judge-in-Charge, 10th Court of the learned Civil Judge (Senior Division) at

Alipore, South 24-Parganas in Title Suit No. 138 of 2020.

The plaintiffs/opposite party nos. 1 and 2 filed a connected suit seeking partition of their share in the suit property and in such suit filed an application under Order 39 Rules 1 and 2 of the Code of Civil Procedure.

The learned Trial Judge by the Order dated February 10, 2020 refused to pass an ad-interim order of injunction on the said application.

The plaintiffs/opposite party nos. 1 and 2 aggrieved by the said order preferred the connected Miscellaneous Appeal No. 53 of 2020.

The Appeal Court below by the Order No. 2 after admitting the said appeal passed an ad-interim order of injunction directing the respondent nos.1 and 3 to maintain status quo over the suit property as mentioned in the application for injunction as on the date of the said order till March 24, 2020.

The said order of injunction was subsequently extended by the other impugned orders.

On perusal of the records it appears that the petitioner, a private limited company has built a super market namely "Regent Super Market Complex" over the suit property and a project of

setting up a multiplex in the said super market is on. The progress of the said project is being stalled by the order impugned.

The amended provision of Section 41(ha) of the Specific Relief Act, 1963 prescribes that an injunction cannot be granted if it would impede or delay the progress or completion of any infrastructure project or interfere with the continued provision of relevant facility related thereto or services been the subject matter of such project.

The appeal Court below has passed an ad interim order of injunction without considering the said provision of the said Act.

That apart the principle order under challenge is bereft of any reason and is liable to be set aside on the said ground alone.

Law is now well settled that an ad interim order of injunction without any support of reason is a nullity.

In this context it is profitable to mention two decisions of the Apex Court in the case of ***Shiv Kumar Chadha v. Municipal Corporation of Delhi*** and others reported in (1993) 3 SCC 161 and in the case of ***Morgan Stanley Mutual Fund v. Kartick Das*** reported in (1994) 4 SCC 225.

The principle order being order no. 2 dated February 29, 2020 therefore suffers from patent jurisdictional error and is accordingly set aside, consequently the orders extending the said principle order are also set aside.

The Appeal Court below is directed to decide the connected miscellaneous appeal expeditiously.

It is made clear that this Court has not gone into the merit of the said appeal and it is for the Appeal Court below to decide the same in accordance with law.

With the above C.O. 1179 of 2020 is disposed of.

The connected application being C.A.N. 5506 of 2020 is also disposed of accordingly.

There shall be no order for costs.

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.)