

21.12.2020
Sl. No.10
srm

C.O. No. 1309 of 2020

Smt. Rekha Das & Ors.

Vs.

M/s, ritzy Manor Pvt. Ltd. & Ors.

Mr. Kushal Chatterjee,

Mr. Debabrata Roy

...for the Petitioners.

Mr. Sandip Bhattacharya

...for the Opposite Parties.

This is an application challenging orders dated February 3, 2020 and March 5, 2020 passed by the learned Additional District Judge, Chandannagore in Misc. Appeal No.19 of 2019 arising out of Title Suit No.445 of 2019.

It is the contention of the petitioners/defendants in the suit that the order dated February 3, 2020 was passed *ex parte* although the learned lower appellate court was not inclined to pass any ad interim order on the first day, that is, on January 15, 2020 when the Misc. Appeal was admitted.

Mr. Chatterjee places the relevant portion of the order dated January 15, 2020 and submits that the learned lower appellate court admitted the appeal and directed issuance of notice upon the defendants/respondents, that is the petitioners herein. The plaintiffs were directed to file the requisites at once and the application for temporary injunction was directed to be heard. January 28, 2020 was fixed for hearing of the

application for temporary injunction, for receipt of LCR and S/R. Next he submits that on February 3, 2020, the learned lower appellate court heard out the prayer for ad interim injunction without considering the S/R. The said order was passed as if the prayer for ad interim injunction was being made for the first time in the Misc Appeal although, on the previous occasion the learned lower appellate court had directed service of summons upon the petitioners and had fixed January 28, 2020 for LCR and S/R. Mr. Chatterjee submitted that such ad interim injunction could not be allowed on merits in view of the fact that the suit filed by the plaintiffs for enforcement of a clause in an expired lease deed, (which expired by efflux of time), would not entitle the opposite parties to get an ad interim order of such a nature allowing the plaintiffs/opposite parties herein, to continue their business from the premises in question.

Mr. Bhattacharya, learned Advocate appearing on behalf of the opposite parties, submits that the learned lower appellate court was conscious that the appeal was filed along with a prayer for ad interim injunction. On January 15, 2020 the Misc. Appeal was admitted. Thereafter the learned lower appellate court passed an order on January 28, 2020 directing that the application for temporary injunction be fixed for

hearing on February 3, 2020. It was not the fault of the opposite parties that the petitioners were not served. Mr. Bhattacharya further submits that it was not the duty of the opposite parties to serve the petitioners as it is on record that the requisites had been deposited and the service ought to have been done through the office of the learned lower appellate court. Mr. Bhattacharya further submits that the order of the learned lower appellate court is a reasoned one and *prima facie* case, balance of convenience and inconvenience and irreparable loss and injury has been considered by the learned lower appellate court.

I have gone through the rival contentions of the respective parties and also the order of the learned lower appellate court. I am of the opinion that the learned lower appellate court could not have proceeded *ex parte* once an order was passed for LCR and S/R. The learned lower appellate court ought to have considered whether at all summons were served on the defendants in view of the order dated January 15, 2020. No interim order was passed by the learned lower appellate court on that day and the learned lower appellate court was silent on that aspect and instead directed service of notice. However *prima facie*, I am of the view that the lessee who is in possession cannot be evicted

without due process of law. Justice would be subserved if *status quo* with regard to the nature, character and possession in respect of the suit property is maintained by the parties. The learned lower appellate court is directed to hear out the appeal itself along with the application for temporary injunction within two months from the next date fixed.

Opposite parties are directed to serve a copy of Misc. Appeal along with the application for injunction upon the petitioners herein, within one week from date, if not served earlier. The written objection shall be filed within a week thereafter upon serving an advance copy to the learned Advocate-on-record for the plaintiffs in the learned Court below.

This Court has not made any observations on the merits of the case. Any observation made hereinabove, is for the disposal of this revisional application. The learned lower appellate court will hear out the Misc. Appeal along with the application for injunction on their own merits without being influenced by any of the observations made hereinabove and upon hearing the rival contentions of the respective parties.

The orders dated February 3, 2020 and March 5, 2020 passed by the learned Additional District Judge,

Chandannagor, in Misc. Appeal No.19 of 2019 are modified to the extent as above.

This revisional application is, thus, disposed of.

There will be, however, no order as to costs.

Urgent photostat certified copy of this order, if applied for, be given to the parties on priority basis.

(Shampa Sarkar, J.)