

Sn 8.12.2020
2

C.O. 1453 of 2020

Chandra Bhusan Chowdhury Vs. Smt.
Padma Yadav. Anr.

Mr. Sanjay Mukherjee
 ..for the petitioner
Mr. Ayan Banerjee
 ..for the respondents

This revisional application has been filed by the developers, who are the defendants in Title Suit No.656 of 2020. The suit is one for declaration that the development agreement entered into between the opposite party no.1 and the petitioner was binding as also for permanent injunction restraining the developer from creating any third party interest.

The plaintiff/opposite party no.1 prayed for an ad-interim order of injunction before the learned Civil Judge, Junior Division, 5th Court, Howrah. The learned Civil Judge, Junior Division, 5th Court, Howrah, by an order dated August 29, 2020 refused to pass any interim order in favour of the plaintiff/opposite party no.1. Aggrieved, the opposite party no.1 preferred Misc. Appeal 51 of 2020 before the learned District Judge, Howrah. By an order dated September 25, 2020, the learned District Judge, Howrah allowed the Misc. Appeal

and also allowed the injunction application filed by the plaintiff in the suit thereby granting an order of temporary injunction restraining the petitioner and other defendants from creating any third party right till disposal of the suit and also directing the parties to maintain status quo in respect of the suit property.

The appeal was heard on affidavits and on perusal of the documents the learned lower appellate Court came to a conclusion that the developer was handing over the possession to the third party and creating third party interest without giving the owner's share of money or the owner's allocation as per the development agreement in the property.

I have considered the documents on record and I find that there is a clause at serial no.8 in the development agreement wherein it has been stated that physical possession and/or registration of the sale deed shall not be given in favour of any third party.

It appears that some tenants have been rehabilitated in the premises. The construction is still in progress and the project, cannot be stalled at this stage as both the parties have entered into a development agreement to develop the project. Thus, the order of status-quo with regard to property in question cannot stand. The petitioner and the

developers are entitled to develop the property in terms of the agreement but the defendants are restrained from creating any third party interest by either inducting more tenants or by registering any deed of sale in favour of any other persons till the disposal of the suit.

This Court has not gone into the claims of the plaintiff and/or the defendants/ opposite parties.

The trial court will dispose of the suit expeditiously on its own merits on the basis of records and evidences.

The order dated September 25, 2020 is modified to the extent as indicated above.

This revisional application is disposed of.

There will be however no order as to costs.

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

(Shampa Sarkar,J.)

