

Sn 11.12.2020
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C.O. 1528 of 2020

BIMAN SEN & ORS. VS. JHARNA
CHOWDHURY & ORS.

Mr. Rakheswar Dey Sarkar
 ..for the petitioners
Mr. Haridas Das
Mr. Ujjal Trivedi
Mr. Sujal Dey
Mr. Anupam Bhattacharya
 ..for the respondents 1-5
Mr. Alok Kumar Ghosh
Mr. S.K. Debnath
 ..for the O.P.s. 7-11

This is an application challenging an order dated
December 1, 2020 passed by the learned Civil Judge, Senior
Division, (In-charge) Sealdah, District South 24 parganas.

By the said application, the learned Court below
refused to hear out the application for temporary injunction
inspite of direction by this Court dated November 10, 2020.

This Court specifically directed the learned Trial
Judge to dispose of the application for temporary injunction in
accordance with law without being influenced by any
observations made by the lower appellate Court. The learned
co-ordinate Bench also restrained the opposite parties Nos. 1 to
5 from alienating and/or encumbering and/or creating any
third party interest over the suit property for a period of four

weeks from date and directed the application to be heard out within the aforesaid period. In order to circumvent the said order of this Court, the opposite parties filed an application under Order 7 Rule 11 of the Code of Civil Procedure for rejection of the plaint on the ground that the suit was not maintainable before the learned Trial Judge. The said application under Order 7 Rule 11 was filed after the order of this Court passed in the presence of the learned Advocates for the defendants/opposite parties were present and they assured that they would not encumber the property in any way.

The learned Trial Judge taking into consideration the principle of law and held that the Court was not in a position to hear out both the applications under Order 7 Rule 11 and Order 39 Rules 1&2 of the Code of Civil Procedure and directed that the application under Order 7 Rule 11 should be heard first on the basis of an application filed by the defendants/opposite parties Nos. 1 to 5. No other reasons were assigned.

The application under Section 151 of the Code of Civil Procedure filed by the opposite party nos. 1 to 5 was allowed by the learned court below in which a prayer was made that the Order 7 Rule 11 application should be heard first, even though the opposite parties were restrained from

alienating and/or encumbering the suit property for a period of four weeks with a direction upon the learned Trial Judge to dispose of the injunction application. The Hon'ble five Judges Bench of this Court, by an order dated November 25, 2020, directed that all interim orders passed by this Court and other Courts should be extended automatically up to February 28, 2021. In view of the order of the Hon'ble five Judges Bench, the interim order passed on November 10, 2020 for a period of four weeks would have continued if the matter not been disposed of. However, expiry of the ad-interim order restraining the opposite party nos. 1 to 5 should not be used as a mechanism to disobey the order passed earlier by this Court specifically because this Court had mandatorily directed the learned Trial Judge to decide the application for temporary injunction within the aforementioned four weeks, which order, has been clearly disregarded by the learned Trial Judge(In-charge). Judicial discipline and propriety requires that the orders of the Hon'ble High Court should be honoured and abided.

Under such circumstances, the order dated December 1, 2020 is quashed and set aside. It is informed that today is the date fixed for hearing under Order 7 Rule 11 application. All parties have appeared before this Court.

The petitioners/plaintiffs shall pray for a short time to file their objection to the Order 7 Rule 11 application and also pray for urgent listing of the temporary injunction application.

All parties are represented here and the submissions made by the opposite party nos. 1 to 5 is not accepted by this Court that the Order 7 Rule 11 application should be heard before the application for temporary injunction, inasmuch as, if the suit itself is not maintainable then no useful purpose would be served in continuing with the hearing of the application for temporary injunction.

Records reveal that the opposite party nos. 1 to 5 were also represented before this Court on the last occasion and their learned Senior Advocate had assured on behalf of the opposite parties that they would not alienate the suit property till the application was heard out.

The injunction was limited for a period of four weeks and the learned Trial Court was directed to conclude the hearing of the application for temporary injunction but the learned Trial Court did not follow the direction of this Court and the ad-interim order of injunction granted by this Court expired on December 8, 2020 by efflux of time.

It is alleged that taking advantage of the Court's

situation and the order dated December 1, 2020, the opposite party nos. 1 to 5 are trying to create third party interest.

Under such circumstances as the wrong done to the plaintiff is on the part of the learned Trial Judge, the plaintiff should not suffer due to the action of the Court and as such status quo with regard to the nature, character and possession of the suit property shall be maintained for a period of three weeks.

The learned Trial Judge, that is, the learned Civil Judge (Senior Division)(in-Charge), Sealdah, District South 24 Parganas will dispose of the application for temporary injunction filed in connection with Title Suit No. 65 of 2018 within the aforementioned period mandatorily. After the application for temporary injunction is heard out the application under Order 7 Rule 11 of the CPC shall be heard.

I do not find any reasons as to what was the impediment before the Court in disposing of the application for temporary injunction first before deciding the application for rejection of the plaint, when the opposite party nos. 1 to 5 already suffered an order of injunction from this Court.

This Court has not made any observations with regard to the merits of the case.

All the applications should be decided on their

own merits.

This revisional application is disposed of.

There shall be 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.)

