

22.01.2021  
Sl. No. 4  
srm

**C.O. No. 96 of 2021**

**Vasav Narayan Sahgal & Anr.**

**Vs.**

**Sesa Minerals Limited & Ors.**

Mr. Suddhasatva Banerjee,

Ms. Rituparna Chatterjee

...for the Petitioners.

Mr. Ranjan Bachawat,

Mr. Satyaki Mukherjee,

Mr. Meghajit Mukherjee,

Mr. Vikas Tewary

...for the Opposite Party No.1.

This revisional application has been filed for a direction upon the learned Civil Judge (Senior Division) at Alipore, to dispose of the application under Order XXXIX Rues 1 and 2 of the Code of Civil Procedure filed by the petitioners/plaintiffs in Title Suit No.639 of 2019 expeditiously.

It is the contention of the petitioners that subsequent events led them to seek an urgent intervention of the Court in the form of an order of injunction but the learned Court below failed to take up the said application and instead fixed subsequent dates for hearing of the application filed by the defendant No.5 under Order VII Rule 11 of the Code of Civil Procedure, for the rejection of the plaint.

Mr. Banerjee, submits that it is a settled law that there was no impediment under the law in disposing of an

application for temporary injunction during the pendency of an application for rejection of the plaint. He relies on the decision of this Court in the matter of Calcutta Cosmopolitan Club Limited vs. Bhanwarlal Bhandari & Ors. reported in (2004) 1 CHN 498.

Mr. Bachawat, learned Senior Advocate appearing on behalf of the defendant No.5/Opposite Party No.1, submits that the suit was not maintainable being barred under the provisions of Companies Act, 2013. The suit was filed sometime in 2019 and the petitioners waited for two years before filing an application under Order XXXIX Rules 1 and 2 of the Code of Civil Procedure. Hence, considering that there was no urgency in hearing the application for temporary injunction, the learned Court below had exercised its discretion and rightly decided to take up the application for rejection of the plaint first. According to Mr. Bachawat, the learned Court below exercised its discretion and the High Court sitting as a superintending Court shall not interfere with such decision by invoking powers under Article 227 of the Constitution of India. He further submits that there was no illegality or material irregularity in the decision of the learned Court below, which has been challenged before this Court.

Having gone through the documents relied upon by the parties in this revisional application and having heard the

submissions of the respective parties, this Court is of the opinion that pendency of an application under Order VII Rule 11 will not be a bar to dispose of the application for temporary injunction. Whether there is any urgency in moving the said application and whether there is a *prima facie* case warranting an order of injunction, are matters to be decided by the learned Civil Court while taking up the said application. In any event, any finding of the Court in an order disposing of an application for temporary injunction will not influence the decision of the Court while deciding the application under Order VII Rule 11 of the Code of Civil Procedure. All findings in an application under Order XXXIX Rules 1 and 2 of the Code of Civil Procedure are tentative in nature.

I agree with Mr. Bachawat that the suit cannot not proceed until the application under Order VII Rule 11 of the Code of Civil Procedure is disposed of. However, there is no bar on the Court to dispose of the application for temporary injunction.

With the observations made hereinabove, this revisional application is disposed of directing the learned Court below to dispose of the application for temporary injunction within a period of one month from the date of communication of this order. The defendant No.5/opposite party No.1 and other defendants/opposite party Nos.2-5 are at liberty to file their

written objections within 10 days from date, if not already filed. Counter-affidavit to the written objections, if necessary, to be filed within three days thereafter. The parties are at liberty to pray for fixing an appropriate date of hearing in terms of this order. As the prayer made in this revisional application is innocuous service upon the other opposite parties is dispensed with.

This Court has not gone into the merits of the claims of the petitioners and the learned Court below will proceed with the application under Order XXXIX Rules 1 and 2 of the Code of Civil Procedure on its own merits, independently and in accordance with law.

This revisional application is, thus, disposed of.

The petitioners are directed to serve a server copy of this order upon the other parties.

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.)**