

**GOURAB KUMAR VS. SUJIT KUMAR MITRA
& ORS.**

**Mr. Kallol Bose
Mr. Nilanjan Pal
Mr. Arindam Dey
Mr. Smarajit Basu
Mr. Amit Pan
 ..for the petitioner
Mr. Aniruddha Chatterjee..Sr.Adv.
Mr. Animesh Paul
Ms. Fatima Hassan
Ms. Salomi Basu
 ..for the opposite parties**

This revisional application has been filed against the order dated December 19, 2020 passed by the learned District Judge, Howrah in Misc. Appeal No. 54 of 2020 arising out of an order dated September 10, 2020 passed by the learned Civil Judge, Senior Division, 3rd Court, Howrah in Title Suit No. 194 of 2020.

The learned Trial Court refused to pass an ad-interim order of injunction, as prayed for by the plaintiffs, in the suit. The learned Trial Judge directed that the question for passing an ad-interim order of injunction would arise only after hearing the parties. Aggrieved by the said order, the Misc. Appeal was filed. The learned lower appellate Court upon considering the prima facie case, balance of convenience and/or inconvenience and

irreparable loss and injury passed an order directing the parties to maintain status quo with regard to the nature, character and possession of the suit property till the disposal of the injunction application by the learned Trial Court. The defendant/petitioner aggrieved by the said order, preferred this revisional application.

Mr. Bose, learned Advocate appearing on behalf of the defendant/petitioner submits that the suit is not prima facie maintainable as it did not fulfill the ingredients of Section 2 sub-section 22 of the Bengal Money Lenders Act, 1940. According to Mr. Bose, by two deeds of conveyance, the suit property under Schedule A and Schedule B of the plaint was sold in favour of the defendant by the plaintiffs and thereafter the plaintiffs filed the suit for reopening the transactions although the said suit was not maintainable in law as the money conveyed by the defendant to the plaintiffs was in consideration of such sale and not a loan in substance.

Mr. Bose relied upon the decisions of the Hon'ble Supreme Court in ***Dharmaji Shankar Shinde & Ors. Vs. Rajaram Shripad Joshi(Dead) through legal representatives and others reported in (2019) 8 SCC 401 and Sm. Nandarani Bose & Anr. Vs. Ranchboddas Muldas Ramanuj & Anr. reported in 1981 SCC online Cal 34.*** According to Mr. Bose, the Hon'ble Apex Court held that where the language of the document is clear,

effect must be given to the same but in case of ambiguity, the nature of the transactions has to be determined considering recitals in document, relevant factors such as debtor-creditor relationship, valuation of property and transaction value, duration of time for reconveyance and surrounding circumstances.

According to Mr. Bose, the deed of conveyance is unambiguous and reflects that the plaintiffs had an intention to sell all rights of ownership and title with regard to the property. Thus, according to Mr. Bose, the suit was not maintainable under Section 36 of the Bengal Money Lenders Act, 1940,

The next contention of Mr. Bose is that when the suit itself was not maintainable an order of injunction could not be passed as the plaintiffs did not have a prima facie case to go to trial. Mr. Bose submits that the balance of convenience and/or inconvenience is also in favour of not granting an order of injunction as the defendant has taken considerable loan and has to pay E.M.I. The next contention of Mr. Bose is that the suit has been under valued, as the sufficient court fee was not paid. If prayer B was allowed the same would be a decree of cancellation of deed of the deed of conveyance.

Mr. Chatterjee, learned Advocate appearing for the plaintiffs/opposite parties submits that this is not the stage for determining whether the plaintiffs have a triable

case. That the plaintiffs may have entered into an agreement for sale but the title had not been conveyed. That the specific case of the plaintiffs was that the deed was executed through fraud and misrepresentation. That the transactions were loan in substance. The question of repayment of Rs.53 lakhs and above would not have the reasons otherwise. The possession itself was not taken over by the defendant.

Heard learned Advocate for the respective parties.

It is an admitted position that the plaintiffs are in possession of the suit property. The transactions between the parties showing repayment of more than Rs.53 lakhs is also an admitted position. Whether the said repayment arose out of alleged loan given by the defendant or whether the same was a repayment against other loans are matters to be decided on evidence.

The deed of conveyance is dated October 26, 2018. The records reveal that six transactions took place by NEFT from the account of the plaintiffs to the account of the defendant on October 30, 2018. There are pleadings by which the plaintiffs have alleged fraud played by the defendant with regard to issuance of blank cheques. A Memorandum of Understanding was also entered into between the parties in October, 2019. Thus, at the ad-interim stage, it would not be right for this Court to

interfere with the order impugned when the injunction application itself is pending disposal before the learned Trial Judge. The transactions between the parties cannot be ruled out at this stage and this Court feels that the order impugned directing the parties to maintain status quo with regard to the nature, character and possession of the suit property, (when admittedly the possession is with plaintiff), till the disposal of the injunction application by the learned Trial Judge is just and proper.

In the above circumstances, this revisional application is disposed of.

The learned Trial Judge is directed to dispose of the application for temporary injunction within a period of one month from the date of communication of this order. Parties are at liberty to file appropriate application before the learned Court below for implementation of this order.

The petitioner is also directed to file his written statement within a period of fifteen days from date. Upon disposal of the injunction application, the learned Court below will proceed with the hearing of the suit expeditiously.

It is also made clear that the learned Court below will decide the application for injunction and the suit on its own merits without being influenced by any observations made hereinabove.

The observations made in this order are limited

to the question of propriety of the order of the learned lower appellate Court.

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.)

