

08.02.2021
Court No. 19
Item No.6
CP

C.O. 333 of 2020

Cholamandalam Investment and Finance
Company Limited
vs.
Sekh Badiul Jamal

Mr. Prabhat Kumar Srivastawa

....for the petitioner.

Mr. P. Saha
Mr. Lalratan Mondal

.....for opposite party.

This revisional application has been filed by the defendant/financier in Title Suit No. 1216 of 2019, being aggrieved by an order dated January 18, 2020, passed by the learned Judge, 12th Bench, City Civil Court at Calcutta.

The defendant's case is that an application under Section 151 of the CPC was taken up by the learned court below and the prayer in the said application was allowed directing return of the vehicle to the plaintiff by the defendant within a week.

It is the contention of the defendant that the points raised by the defendant with regard to ignorance of the order of ad-interim injunction was not considered by the learned court. That the main prayer for release of the vehicle, in the application

under Section 151 of the CPC was allowed and, thereafter, the said application was fixed for further hearing. That the vehicle was seized as the financier was not aware of the order of ad-interim injunction. That the applications under Section 5 and 8 of the CPC ought to have been heard out first before the application under Section 151 of the CPC was taken up for hearing.

Mr. Saha, learned advocate appearing on behalf of the plaintiff, submits that once a court passes an ad-interim order, it is the duty of the court to exercise its inherent power to ensure that the ad-interim order of injunction is obeyed and complied with. According to him, it is a matter of public policy and the court should ensure that its orders are obeyed by the parties concerned. He relies on a decision of this court dated May 5, 2008, in the matter of **ICICI Bank Limited vs. Gangaram Ghosh in FMAT No. 545 of 2008**. Thus, according to Mr. Saha the learned court below did not act illegally or with material irregularity in restoring the possession back to the plaintiff as the vehicle was seized from the custody of the plaintiff during the subsistence of an ad-interim order of injunction.

Mr. Srivastawa, learned advocate appearing for the defendant/financier, submits that the order is not a reasoned on. That the court has not recorded

satisfaction as regards service of the plaint, interlocutory application and also the order of ad-interim injunction. That the financier did not have the knowledge of the ad-interim order of injunction and, as such, the vehicle was seized.

Mr. Srivastava further points out to two decisions of this court in the matter of Cholamandalam Investment & Finance Co. Ltd. vs. Elious Dapatory [C.O. 2773 of 2016], dated August 22, 2016 and in the matter of Citicorp Finance (India) Ltd. vs. Sasanka Biswas [FMAT 213 of 2006], dated May 4, 2006 and submits that a Division Bench of this court as also the learned coordinate Bench of this court have specifically held that the civil court did not have the power to pass an order of injunction during the subsistence of an application under Section 5 and Section 8 of the Arbitration & Conciliation Act, 1996. The courts have held that if there is an arbitration clause, then the parties ought to be relegated to the appropriate forum and when the suit itself prima facie could not go to trial return of the vehicle could not be directed. It was also held in a case under similar circumstances that pending applications under Section 5 and Section 8 ought to have been disposed of prior to consideration of the application for return of vehicle.

I have heard and considered the submissions made by the respective parties. I have perused the order impugned. Admittedly, from the order impugned it does not appear that the learned court below recorded its satisfaction as to the knowledge of the defendant about the ad-interim order of injunction passed by the learned court below on August 13, 2019. Records reveal that the copies of the plaint and the injunction application were served upon the defendant on November 7, 2019.

However, this court is not required to answer the question as the learned court below ought to have satisfied itself before passing the order of release of the vehicle, as to whether the defendant/financier was aware of the ad-interim order of injunction and also ought to have assigned its reasons for having directed the defendant to restore possession to the plaintiff.

It also appears that the decisions cited by the defendants had not been considered by the learned court below. Once the direction for release has been passed thereafter keeping the application for further hearing does not seem appropriate. The learned court should have decided the application under Section 151 of the CPC on its own merits and passed an order.

I have considered the respective contentions of the parties. The decision referred to by Mr. Saha in the matter of ICICI Bank Limited (*supra*) does not apply in this case, inasmuch as, in the said judgment Their Lordships came to the conclusion that the learned trial court had disposed of the application under Section 151 of the CPC having satisfied itself that the defendants despite having knowledge of an ad-interim order of injunction had seized the vehicle in question and an order under Section 151 of the CPC could be passed for restoration of the vehicle to the plaintiffs subject to payment of instalments. In this case the plaintiff has also not paid the instalment as directed by the learned court below.

However, this court has not entered into the merits of the claims and counter-claims of the parties.

The revisional application is disposed of with a direction upon the learned court below to hear out the application under Section 151 of the CPC afresh after giving an opportunity of hearing to both the parties and allowing them to rely upon documents and decisions in their respective favours. The learned court below is directed to hear out the application and pass necessary orders within a period of one month from the date of communication of this order.

The order impugned is set aside and quashed.

The learned court below shall not be influenced by any observations made hereinabove and shall proceed in accordance with law.

The defendant/financier is restrained from disposing of or creating any third party interest in respect of the vehicle in question till the disposal of the application under Section 151 of the CPC by the learned court below.

The revisional application is disposed of. There shall be no order as to costs.

Urgent photostat certified copy of this order, if applied for, be given to the parties as expeditiously as possible subject to compliance of all usual formalities.

(Shampa Sarkar, J.)