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SK
Ct. No. 18
16.08.2021

**C.O. No. 348 of 2020
(Via Video Conference)**

**M. Safiulla Wakf Estate & Anr.
Vs.
M/s. Accord Advertising Pvt. Ltd.**

Mr. Ranajit Chatterjee,
Mr. Susenjit Banik,
Mr. Aniruddha Mitra ... For the petitioners.

Mr. Sanjoy Mukherjee ... For the opposite party.

This is an application under Section 24 of the Code of Civil Procedure.

Mr. Sanjoy Mukherjee, learned advocate for the opposite party files affidavit- in- opposition to the application which is taken on record.

The petitioners are the plaintiffs of the Title Suit No. 169 of 2019 (*M. Safiulla Wakf Estate & Anr. –Vs- Accord Advertising Pvt. Ltd.*) pending before the learned Civil Judge (Senior Division) at Sealdah.

The opposite party is the plaintiff of Title Suit No. 247 of 2014 (*Accord Advertising Pvt. Ltd. –Vs- M. Safiulla Wakf Estate*) pending before the 2nd Court of learned Civil Judge, (Junior Division) at Sealdah.

The petitioners are praying for the withdrawal of the suit filed by the opposite party from the Court where it is pending and transfer of it to the Court where the suit filed by them is pending.

The primary ground for seeking such withdrawal and transfer of the said suit is that the parties and subject matter of both the suits are same, moreover,

the issues to be decided in both the suits are almost similar.

The petitioners in their suit being Title Suit No. 169 of 2019, *inter alia*, have prayed for the following reliefs:-

- “a) Decree for mandatory injunction directing the defendant, their men and agents to remove all iron structures, hoardings, grills, bill boards, etc., from the roof of the suit premises, being ‘Park Palace’, 1, Suhrawardy Avenue, P.S. Beniapukur, Kolkata-700017 and ‘Park Court’, 2, Syed Amir Ali Avenue, P.S. Beniapukur, Kolkata-700017, as fully described in the Schedule below, within such time as the Learned Court may direct;*
- b) Decree for prohibitory injunction restraining the defendant, their men and agents from installing any hoardings/bill boards, etc, for display on the roof of the suit premises, being ‘Park Palace’, 1, Suhrawardy Avenue, P.S. Beniapukur, Kolkata-700017 and ‘Park Court’, 2, Syed Amir Ali Avenue, P.S. Beniapukur, Kolkata-700017, as fully described in the Schedule below;*
- c) Decree directing the defendant to pay the plaintiffs all outstanding licence fee upto 22.11.2019, totalling Rs 1,03,42,000, with interest @ 18% p.a., and charges for wrongful user @ Rs. 10,000/- per day w.e.f. 23.11.2019, as stated in paragraphs nos 16, 17 and 18 above, together with interest @ 18% p.a.;”*

whereas the opposite party in his suit being Title Suit No. 247 of 2014 *inter alia*, has prayed for the following reliefs:-

“a) A Decree of declaration that the defendant is under obligation to renew the agreement dated 29.06.2009 entered into by and between the plaintiff and the defendant;

b) A Decree of Permanent order of Injunction restraining the defendant and his men and agents from removing the Neon Sign and/or hoarding affixed on the Spaces mentioned in the schedule herein below;”

It appears from record that the same parties are litigating in both the suits in different capacity over the self-same property. The reliefs claimed by the parties in their respective suits clearly indicate that some common issues would crop up for consideration in both suits.

Therefore, to avoid conflicting decision on common issues, the said two suits are required to be heard by one Court. The Civil Judge (Senior Division) at Sealdah, being Court of higher grade, the suit filed by the opposite party is required to be transferred to the said Court.

Let the records of the said Title Suit No. 247 of 2014 be withdrawn from the 2nd Court of learned Civil Judge (Junior Division) at Sealdah and be transferred to the Court of learned Civil Judge (Senior Division) at Sealdah where the said Title Suit No. 169 of 2019 is pending.

The transferee Court shall proceed to dispose of the Title Suit No.247 of 2014 from the stage at which it has already reached.

The parties are at liberty to apply before the Transferee Court for analogous or simultaneous hearing and disposal of the said two suits. In the event such a prayer is made, the Transferee Court shall consider it in accordance with law. It is made clear that this Court is not expressing any opinion regarding the said issue.

C.O. 348 of 2020 is disposed of with the above terms without any order as to costs.

Urgent Photostat certified copy of this order, if applied for, be supplied to the parties subject to compliance with all requisite formalities.

(Biswajit Basu, J.)