

15.03.2021
Ct. 19
D/L 13
ab

C.O. 476 of 2021
(Via Video Conference)

M/s. Disha Construction & Ors.

-Vs-

Smt. Soma Ghosh & Ors.

Mr. Jiban Ratan Chatterjee,
Mr. Sanjay Mukherjee,
Mr. Aniruddha Dutta,

... for the petitioners

Mr. Shibnath Ganguly,
Mr. Subhasis Sen,

... for the opposite party No. 1

This revisional application has been filed challenging an order dated February 15, 2021 passed by the learned Additional District Judge at Sealdah in Misc. Appeal No. 25 of 2020 arising out of the Title Suit No. 65 of 2020. Title Suit No. 65 of 2020 is pending before the learned Civil Judge (Senior Division) at Sealdah.

By an order dated 24th August, 2020, the learned Civil Judge (Senior Division) at Sealdah rejected the application for ad-interim injunction filed by the plaintiff. The learned trial Judge came to the following conclusion:

“On meticulous perusal of the plaint and injunction application it appears to this court that the plaintiff

herself has stated that a suit with regard to this dispute is filed by the defendants against the plaintiff and the proforma defendants being T.S. No. 51/2017 which is pending for adjudication and the plaintiff herself made an averment that the plaintiff has already enter appearance and has filed her written statement and written objection. But the plaintiff has not filed a single scrap of paper with regard to T.s. No. 51 of 2017. Now, the plaintiff has come up filing the instant suit praying for declaration and has filed an application praying for ad-interim injunction against the defendant and their men and agents from doing further construction work and from changing the nature and character of property and creation of third party interest. This Court finds its surprisingly that the plaintiff herself made averment that the construction work was stopped by the KMC and the round the clock police posting was made in the suit property at the instance of KMC by the police authority and on the other had, the plaintiff stated that the construction work is still going on. The plaintiff did not file a single scrap of paper to substantiate her contention. It is further pertinent to mention that the plaintiff has failed to file the certified copy of the deed of gift being no. 3122 of 2013 for reasons best known to her. Further it appears that paragraph 32 of the plaint where dates of cause of action is specified is no complete.

To sum up it is worthwhile to mention that the plaintiff has failed to bring out the prima facie case as well as irreparable loss and injury which the plaintiff might suffer if the injunction is not granted.

Therefore, I am not inclined to allow the petition at this state without hearing the other side”

The plaintiff aggrieved by the aforementioned order preferred a misc. appeal. The said misc. appeal was registered as Misc. Appeal No. 25 of 2020. The learned lower appellate court by the order impugned allowed the misc. appeal and passed the following order:

“That the Misc. Appeal No. 25 of 2020 be and the same is allowed on contest but without cost. Both parties are directed to maintain status quo in respect of nature, character and title of the suit property till disposal of the temporary injunction petition.”

Aggrieved by the aforementioned order, the defendants/petitioners moved this Court. It is contended by Mr. Chatterjee, learned Senior Advocate appearing on behalf of the petitioners that the learned lower appellate court has passed a non-speaking order while allowing the misc. appeal. That substantial construction has been done. That the plaintiff and the other co-sharer had granted a power of attorney to the petitioners for development of the property. That the plaintiff could not unilaterally revoke the power of attorney. That the plaintiff also entered into an understanding with the defendants/petitioners by executing a memorandum of understanding and has

already accepted Rs. 5,61,000/-. That the plaintiff has already been provided with tenanted accommodation and the rents are paid by the petitioners. Further, it is contended that G+3 building has already been constructed as per the development agreement and that Rs. 55 lakhs and above had been spent by defendants in the suit.

Mr. Ganguly, learned advocate appearing on behalf of the plaintiff/opposite party No. 1 and submits that the learned trial Judge may be directed to dispose of the injunction application, as in any event the defendants are not in a position to construct on the suit property in view of the proceedings initiated by the KMC against the unauthorized construction.

I have heard the contentions of the respective parties. It is not disputed that the plaintiff has only 12% share in the property. It is also not disputed that G+3 construction has already been completed and the internal fittings and other works are pending. That the plaintiff has herself executed the power of attorney in favour of the defendants along with other co-sharers. That the strip of land gifted by the petitioners to the KMC, prima facie appears to be out of the developer's share and not from the owner's share.

Prima facie it appears that the learned lower appellate court failed to take into consideration these aspects stated hereinbefore.

However, the construction has been stopped by the KMC and this Court cannot pass an order at this stage to allow the construction to continue unless the KMC drops the proceeding against the petitioners. That is a separate case and a separate issue.

Thus, I do not find any reason to pass any other order in favour of the petitioners at this stage except the learned Court below shall dispose of the application for temporary injunction within a period of two weeks from date. The defendants will file their written objection to the said application for temporary injunction within three days. The parties shall file their respective documents in support of their respective contentions before the learned trial Judge. The learned trial Judge will act and proceed in accordance with law on the basis of the documents filed by the parties and their pleadings.

The learned advocate-on-record for the defendants shall also be at liberty to bring the order that may be passed by the KMC, to the notice of the learned Court below.

The revisional application is, thus, disposed of.

This Court has not gone into the merits of the claim and the counter claim of the parties and the learned Court below shall proceed on its own merits in accordance with law.

However, it is made clear that in view of stoppage of ongoing work on a project and the amount of investment, which has been done, the time limit fixed by this Court is mandatory.

There shall, however, be no order as to costs.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties upon compliance of all legal formalities.

(**Shampa Sarkar, J.**)