

S/L 14
11.03.2021
Court. No. 19
GB

C.O. 491 of 2021

Caravan Electricals Private Limited
Vs.
Deb Chandra Shukla & Anr.

(Through Video Conference)

Mr. Shiba Prasad Mukherjee,
Mr. Debanjan Mukherjee,
Mr. Rohit Das.

... for the Petitioner.

Mr. Jahar Lal Ray,
Ms. Kavita Rani.

... for the Opposite Parties.

This revisional application has been filed challenging an order dated January 28, 2021 passed by the learned Additional District Judge, 13th Court at Alipore in Title Suit No.24 of 2017.

By the order impugned the learned court below refused to extend the *ad interim* order which was passed originally in the suit on January 6, 2018. According to the learned court below the *ad interim* order which was passed on January 6, 2018 and extended upto January 30, 2019 had merged with the order dated June 30, 2019, by which the suit was dismissed along with an application for injunction. Thus, the learned court below refused to extend the *ad interim* order on the ground that when the High Court

allowed the appeal preferred from the order dated January 30, 2019, being FAT No.371 of 2019, the High Court simpliciter set aside the order dated January 30, 2019 and directed the trial court to dispose of the application for temporary injunction, afresh.

The relevant portion of the order impugned is quoted below:

“As per the law laid down by the Hon’ble Kerala High Court at Para-27(c) since the interim order passed on 06.01.2018 merged with the final order dated 30.01.2019 the interim order cannot be said revived automatically. From the plain reading of the order dated 20.08.2019 it also appears to me that it is the direction of the Hon’ble High Court to hear the injunction application afresh. That means whether the plaintiff is at all entitled to any interim protection that has to be decided afresh and after giving an opportunity to the defendant for filing objection.

In view of the aforesaid detailed discussion, in my considered opinion the order passed on 06.01.2018 came to an end when the suit was dismissed on merit and the same has been revived because of the Hon’ble High Court has simply set aside the order dismissing the suit.

In view of such fix 26.02.2021 for hearing of injunction application, W.O if any in the mean time.”

This matter has a chequered history. A suit was filed sometime in 2017 under the Trade Mark Act. By an order dated January 6, 2018 an ad interim injunction was passed restraining the defendants/opposite parties and their men and agents from passing off its product by using the trade mark 'NIFI CALCUTTA' which was deceptively similar to the mark 'CALCUTTA' used by the plaintiff company. The said interim order was extended from time to time upto January 30, 2019. On January 30, 2019 the learned court below dismissed the suit itself instead of disposing of the application for temporary injunction.

It appears from the records that an application for extension of interim order had been filed, which was still with the record.

Aggrieved by the dismissal of the suit and dismissal of the order of injunction, FAT 371 of 2019 was filed before this Court by the plaintiff. The said appeal was allowed and this Court directed that the order impugned be set aside and the suit be restored and the matter be remitted back to the trial court for disposal of the application for temporary injunction afresh. The connected application filed in the appeal was also accordingly disposed of as infructuous. Thereafter, it is a fact that there was an incident of fire in the court of the learned Additional District Judge,

13th Court at Alipore, where the suit was pending and some records were destroyed. It is also a fact that no activities were carried on in the court due to the pandemic situation until the matter came up before the learned court below on January 28, 2021, when the petitioner renewed the prayer for extension of the interim order.

The learned court below observed that restoration of the suit by the High Court by setting aside the order dated January 30, 2019 would not automatically revive the *ad interim* order and the prayer for extension of the *ad interim* order was rejected on the assumption that without a specific direction from the High Court for revival of the *ad interim* order, the learned court below could not extend the interim order.

Mr. Mukherjee, learned advocate appearing on behalf of the petitioner submits that the plaintiff has been using the trade mark since 1995. Records have been shown in justification of such contention. It is an admitted position that the defendants have been restrained from January 6, 2018 from passing off its product in the market under its trade mark. Unfortunately, at the time of hearing of the application for injunction, the court in gross violation of the principles of law dismissed the suit as not

maintainable. The High Court had taken note of such a shocking order of the learned court below and allowed the appeal thereby setting aside the order impugned. The order of the High Court was passed on August 20, 2019. Thereafter, the fire broke out sometime in July 2020 and the business of the court did not allow disposal of the application for temporary injunction as directed by this Court, due to the pandemic situation. The litigant cannot be held responsible for the above situation.

Mr. Ray, learned advocate appearing on behalf of the opposite parties submits that the court did not have any occasion to extend the *ad interim* order as the *ad interim* order had expired long ago. He further submits that setting aside of the order of dismissal of the suit and restoration of the suit would not automatically revive the interim order. He further submits that the suit was dismissed on contest on merits and setting aside of the order of dismissal would not revive the ad interim order, as it was not a case where the suit was dismissed for default. He further submits that the petitioner should approach the Hon'ble Division Bench for clarification of the order and pray for further interim orders before the Hon'ble Division Bench which disposed of the appeal. His next contention is that the judgment [**Vareed**

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reported in ***(2004) 6 SCC 378***] relied upon by Mr. Mukherjee will not apply in the facts of this case.

Having heard the contentions of the learned advocates for the respective parties, in my opinion by the order impugned the learned court below has rejected the prayer for extension of the interim order on the ground that the revival of the suit by the order of this Court would not amount automatic revival of the *ad interim* order. In this case, the petitioner had specifically prayed for extension of the interim order, which had already been passed earlier. The interim order had merged with the order of dismissal of the suit. The suit was restored and the order of dismissal of the suit was set aside with a direction upon the learned court below to hear out the application for temporary injunction afresh. In the meantime, the *ad interim* order which was passed merged with a patently erroneous order of dismissal of the suit. The said order was set aside with observations. During the intervening period from the order of this Court and till the matter was taken up on January 28, 2021, the pandemic situation interrupted the business of the Court and the petitioner was precluded from praying for an extension of the interim order, earlier. However, it appears that the High Court directed the learned

court below to hear out the application for temporary injunction. There is no quarrel with the contention of Mr. Ray that the application for temporary injunction should be heard out expeditiously.

I now consider whether the learned court below was wrong in not extending the interim order. This Court in exercise of power under Article 227 of the Constitution of India finds that in the facts as narrated hereinabove, an interim protection should be granted to the petitioner. Irreparable loss and injury would be suffered especially because the said order of injunction was enjoyed by the petitioner since January 6, 2018 and till the illegal dismissal of the suit. The intervening pandemic situation and the litigation which the petitioner had to initiate before the High Court did not permit extension of the said interim order. For that, the litigant should not suffer. It is also on record that the petitioner had enjoyed the trade mark since 1995.

Under such circumstances, the defendants are restrained from selling their product upto March 19, 2021. The application for temporary injunction shall be decided by the learned court below within a period of two months from the next date fixed.

It is made clear that the petitioner shall be at liberty to pray for an *ad interim* order before the

learned court below on the next date, which shall be considered in accordance with law. The opposite parties shall file their written objection within March 19, 2021, when the matter is fixed in the learned court below.

It is also made clear that as the issue involves business transactions of the parties and comparative financial loss, the learned Judge-in-Charge of the Court should take up the matter, in case, the court of the learned Additional District Judge, 13th Court at Alipore is vacant.

The revisional application is disposed of.

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.)