

DI. March 8,
15. 2021

F.M.A.T. 345 of 2020

Mr. Falguni Bandyopadhyay,
Mr. Manas Ghosh,
Mr. Pradeep Pandey,
...for the appellant.

Re: CAN 1 of 2021 (injunction)
Filed on January 27, 2021.

This appeal is against rejection of the temporary injunction under Order XXXIX, Rules 1 and 2 read with Section 151 of the Code of Civil Procedure, passed by the learned Civil Judge (Senior Division), First Court at Barasat, North 24-Parganas in Title Suit No. 216 of 2014. The rejection is purely for suppression of materials, when the ad interim order of injunction was granted in favour of the plaintiff/appellant. The defendant no. 1 appeared in the suit and filed his written statement denying execution of an agreement for sale dated June 27, 2003, which was sought to be capitalised by the plaintiff/appellant, alleging to have made part payment to the extent of Rs. 9 lakh, out of Rs. 11 lakh in connection with such proposed agreement for sale, allegedly executed between the parties on June 27, 2003.

The learned advocate appearing on behalf of the plaintiff/appellant, advertent to a document enclosed with the supplementary affidavit to the application for injunction, proposes that there has been understanding between the parties, for reaching settlement of the dispute, and upon consideration of which, the defendant no. 1 was granted bail in connection with a prosecution, already registered at Barasat Police Station being Barasat Police Station Case No. 335 of 2014 dated April 11, 2014 under Sections

420/406/387/325/34 of the Indian Penal Code.

The learned advocate appearing on behalf of the appellant now proposes to rely upon such document, which was relied upon, while making release of defendant no. 1 on bail. This document could not be produced before the trial court, when the application for temporary injunction under Order XXXIX Rules 1 and 2 of the Code of Civil Procedure was considered and rejected.

The defendant no. 1/respondent no. 1 basically challenged execution of the alleged agreement for sale dated June 27, 2003 with a specific plea denying to have received any money in connection with such agreement for sale.

There was a previously instituted suit between the selfsame parties connecting the selfsame subject land vide Title Suit No. 191 of 2014 now pending before the learned Civil Judge (Junior Division), First Court at Barasat, North 24-Parganas. In connection with such pending civil suit, the plaintiff/appellant has been suffering injunction order. Making material suppression of such fact, the plaintiff/appellant has instituted the present suit before the learned Civil Judge (Senior Division), First Court at Barasat.

We find no wrong in the order impugned passed by the trial court, while making rejection of the prayer for injunction, as the plaintiff/appellant was not fair enough in making disclosure of facts while obtaining the ad interim injunction. Moreso, the document now relied upon is a subsequent document, which not even could be produced before the trial court, when this temporary injunction application was disposed of.

There is a specific direction passed by a learned Judge

of this court in connection with a civil revision being C.O. 2953 of 2019 directing the court below to ensure expeditious disposal of the application for temporary injunction in the pending suit being Title Suit No. 216 of 2014 without granting any unnecessary adjournment to either side. Such direction passed by this court was supposed to be complied within December 31, 2019. The trial court after making disposal of the application for temporary injunction had already fixed date for framing issues demonstrating thereby the intention of the court below to go ahead with the suit, so as to reach the logical conclusion of the suit after collection of evidence, to be adduced by the parties to this case.

It is not disputed by the appellant that there is another suit pending before the learned Civil Judge (Junior Division), First Court at Barasat, being Title Suit No. 191 of 2014. There is enough scope left open for making consolidation of trial of two suits by initiating an independent exercise, for which no direction, though proposed to be given, is not necessary at this stage. Since there has been already a direction passed in connection with C.O. 2953 of 2019, we rely and trust upon the trial court that the trial of this case will be expeditiously concluded upon sensing the true purport of the order passed in C.O. 2953 of 2019.

We, however, make it clarified that the document, now propose to be relied upon by the plaintiff/appellant, may be placed at the time of adducing evidence before the learned trial judge. Since there is nothing to interfere with the observations and findings reached by the trial court in connection with rejection of Injunction Application, the same would remain unaltered.

With the aforesaid directions and observations, the instant appeal and the connected application are disposed of even at the admission stage.

There will be no order as to costs.

(Soumen Sen, J.)

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(Subhasis Dasgupta, J.)