

08-04-2021

Ct. 17

FMAT 252 of 2021
With
CAN 1 of 2021

Panchanan Saha
Versus
Siddheswar Saha & Ors.
(Through Video Conference)

Mr. Sounak Bhattacharya, Adv.
Mr. Sounak Mandal, Adv.
...for the appellant

The appeal is arising out of two orders dated 22nd February, 2021 and 3rd March, 2021 by which the learned trial court refused to extend the interim order on the ground that plaintiff has not filed any application for extension of interim injunction order.

Mr. Sounak Bhattacharya, learned Advocate appearing on behalf of the appellant submits that the plaintiff was under the impression that in view of the order passed on 24th March, 2020 in WP No. 5323(W) of 2020, the interim order would remain in force till 16th April, 2020 and on such understanding, no formal application was filed for extension of the interim order.

At the outset, the said understanding is totally misconceived as the said order cannot be construed to mean that when the prayer for extension of the interim order is opposed, the learned trial court should mechanically extend the interim order relying upon the order dated 24th March, 2020. In the instant case the learned Counsel appeared on behalf of the defendant no.1 has raised an issue of maintainability of the suit on the ground that if anyone purchased the demarcated land then under Section 14 of the WBLR Act the issue may not be

maintainable.

Although, we do not find the learned trial court has arrived at a prima facie finding with regard to the non-maintainability of the suit as well as the merits of the defence argued before the learned trial court, the impugned orders show that merely because the plaintiff did not file an application for extension of the interim orders, the said interim orders were not extended. We feel that once the learned trial court records satisfaction that the plaintiff has made out a prima facie case and unless such view is shaken, the learned trial court is required to extend the said interim order. However, we do not appreciate the reason for non-filing of an application for extension of the interim orders. An application for extension of the interim orders ought to have been filed.

Considering the fact that the learned trial court has fixed the matter regarding maintainability of the suit as recorded in the order dated 3rd March, 2021, we revive the interim order which was initially passed on 16th October, 2020. However, the order shall be operative from today, meaning thereby that from today both the plaintiff and the defendant nos. 1 and 2 shall maintain status quo in respect of the nature, character and possession of the suit properties till 21st April, 2021. The matter is fixed before the learned trial court for deciding the issue regarding maintainability of the suit.

In the event the application for injunction could not be decided within the aforesaid period, it would be open for the learned trial court to extend the interim order after hearing the learned Counsel for the parties upon giving reasons therefor and on a prima facie satisfaction that the suit is maintainable.

This order shall immediately be communicated to the learned Advocate appearing on behalf of the respondents as well as upon the respondents for their information. This order shall also be communicated to the learned trial judge.

The appeal and the application are accordingly, disposed of.

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

(Kausik Chanda, J.)

(Soumen Sen, J.)