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2021

C.O. No.1105 of 2021

**Pawanputra Tradecom Private Limited
Versus
Buddhabhumi Parikrama Private
Limited and others**

(Via Video Conference)

Mr. Arindam Banerjee,
Mr. Paritosh Sinha,
Ms. Soni Ojha,
Mr. Sounak Ghosh.
...for the petitioner.

Mr. Susanta Pal,
Mr. Ananda Dulal Sarkar.
...for the opposite party no.4.

The petitioner contends that, despite the petitioner holding title and being in possession of the suit property, the defendant/opposite parties filed a suit and obtained an order of injunction restraining the petitioner from changing the nature and character of the property as well as disturbing the alleged possession of the opposite parties in respect of the same property.

Learned counsel further contends that the petitioner is armed not only with documents of title

but the relevant records which show that the petitioner is in possession of the said property.

As such, it is argued that the trial court rightly refused to grant ad interim injunction. However, the appellate court, even at the ad interim stage, granted blanket order of status quo in respect of the suit property not only regarding change of nature and character but also regarding possession, without arriving at any particular finding as regards who is in possession.

Learned counsel appearing for the opposite party no.4 contends that the impugned order is justiciable and passed in consonance with law. In the event the suit property is transferred or possession is altered in the meantime, the final relief claimed in the suit will be adversely affected.

Upon hearing learned counsel for the parties and going through the materials on record, it is apparent that the trial court was justified in refusing injunction, since no specific proof of possession and/or title was produced by the opposite parties at the ad interim stage.

The appellate court, without placing reliance on any material or considering any document to hold that the opposite parties are in possession, passed the blanket order of status quo regarding possession

as well as the nature and character of the suit property. Such an approach has been deprecated time and again by this Court and the Hon'ble Supreme Court, since a vague status quo order, without specific findings on the actual status as on that date, creates more confusion and future complications rather than resolving the dispute.

However, the contention of the opposite parties as regards change of nature and character and/or transfer to third parties has some substance. Since the injunction application pending before the trial court as well as the miscellaneous appeal are yet to be decided, it would be premature to permit the parties to transfer, alienate or change the nature and character of the suit property. However, there cannot be any ad interim injunction, at the present juncture, regarding possession in respect of the suit property. It may be recorded here that although proper service could not be effected on the opposite party nos.1 and 2 as per the affidavit-of-service filed in Court today, since the opposite party nos.3 and 4 were served and the opposite party no.4 is represented by counsel today, it is deemed that there was substantial service on all the opposite parties, since the opposite parties are collectively plaintiffs in the court below, having filed the suit through the same learned advocate.

Hence, notice to opposite party nos.3 and 4 is deemed to be sufficient notice on the absentee opposite parties as well.

In view of the aforesaid observations, C.O. No.1105 of 2021 is disposed of by modifying the impugned order dated April 6, 2021 passed by the learned District Judge at Alipore, District-South 24 Parganas in Miscellaneous Appeal No.85 of 2021 to the effect that the status quo granted in respect of possession of the suit property is hereby vacated. However, the status quo as regards transfer, alienation in favour of third parties and change of nature and character of the suit property, as granted by the appellate court, is sustained. The appellate court is requested to dispose of the miscellaneous appeal itself as well as connected applications as expeditiously as possible, positively within three months from the date of communication of this order to the said court.

It is clarified that this Court has not gone into the merits of the respective contentions of the parties and both the appellate court and the trial court will be free to adjudicate the matters respectively before them independently on their own merits without being influenced in any manner by

any of the observations made herein or in the impugned order.

Both parties and the court below shall act on the communication of the learned advocates for the parties and/or server copies of this order, without insisting upon prior production of a certified copy.

There will be no order as to costs.

Urgent website certified copies of this order, if applied for, be given to the parties upon compliance of all formalities.

(Sabyasachi Bhattacharyya, J.)