

15th June,
2021
(AK)
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C.O 1181 of 2021

Sanjay Prasad Nandy & Ors.
Vs.
Anjana Saha

Mr. Probal Mukherjee
Mr. Supratik Syamal
...For the Petitioners.

Mr. Subhabrata Choudhury
...Opposite Party.

This is an application filed by the petitioner who is the defendant in a suit for declaration and injunction. The petitioner is aggrieved by an order passed by the Appellate Bench (the order impugned) dated 21st May, 2021 in an appeal filed by the opposite party/plaintiff.

Learned counsel appearing for the petitioner submits that by an order dated 2nd February, 2021 the petitioner (defendant in the suit) was restrained from carrying out any further construction although the construction was almost 90% complete as on that date. The order of injunction passed by the trial court was to remain valid till 19th April, 2021 on which date the order was vacated due to the non-appearance of the opposite party/plaintiff.

Counsel submits that the revision petition filed by the opposite party against the order of injunction order was dismissed on 28th May, 2021 on the ground of the opposite party having a remedy under The Code of Civil

Procedure for challenging the order of the trial court's order. Counsel submits that the impugned order is a result of the appeal filed by the opposite party/plaintiff by which ex-parte order the appellate court directed the plaintiff/opposite party to deposit a certain sum of money as security and stayed the order of trial court by which the injunction order was vacated on 19th April, 2021.

Counsel submits that the petitioner has already filed a written objection as well as an application for vacating the order of injunction before the trial court and raises further questions on the maintainability of the appeal under the CPC. Counsel apprehends that although the appellate court has fixed the matter on 21st June, 2021, the petitioner will have to wait for a considerable length of time before any order can be expected in the appeal.

Learned counsel appearing for the opposite party questions the maintainability of this application on the observations made by the co-ordinate Bench while dismissing the civil revision which had been filed by the opposite party.

Upon hearing learned counsel and perusing the order impugned, this court is of the view that the impugned order does not address the lack of diligence on the part of the opposite party in taking steps for extending the order or having it confirmed. Moreover, the benefit of the injunction was restored by the appeal court after more than a month of the interim order being vacated and that too without hearing the petitioner. The

opposite party will hence not be prejudiced if the trial court is directed to expedite the matter by hearing the parties on the pleadings filed by the parties before the trial court including the application for vacating the injunction order and the written objection filed by the petitioner.

Counsel for the plaintiff/opposite party submits that the plaintiff has also filed several applications before the trial court including an application for investigation by a Commissioner.

In view of the above, C.O. 1181 of 2021 is disposed of by setting aside the impugned order and with a direction on the Civil Judge (Senior Division) 5th Court at Alipore to expedite the hearing of the suit and the applications filed by the parties without any unnecessary delay. In order to prevent the situation as existing on 21st May, 2021 being drastically changed overnight, there shall be no change in the factual position as existing on 21st May, 2021 for a period of three weeks or until orders passed by the trial court, whichever is earlier.

(Moushumi Bhattacharya, J.)