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22.06.2021
TN

CO No.1189 of 2021

(Via video conference)

Alpine Distilleries Private Limited and another
Vs.
Allied Blenders and Distillers Private Limited and
others

Mr. Anirudha Chatterjee,
Mr. Noelle Banerjee,
Ms. Pritha Basu

.... for the petitioners

Mr. Ratnanko Banerjee,
Mr. Deepan Kumar Sarkar

.... for the opposite parties

The limited question involved in the present revisional application is whether the appellate court was justified in law in granting a blanket stay of operation of an order of injunction passed by the trial court, whereby the defendant/opposite party no.1 was restrained from interfering with the carriage of business by the petitioners in the suit property.

Learned counsel appearing for the petitioners contends that the order of stay

was unlawful and passed without jurisdiction, since it amounted to allowing the appeal prior to hearing the parties on the merits thereof.

That apart, learned counsel for the petitioners submits that the plaintiff, under an unregistered lease deed, was duty-bound to pay rent as stipulated in such deed in the capacity of a lessee. As such, without making any payment, the order of stay could not continue.

It is seen from the records that initially the plaintiff had obtained an order of injunction from the trial court restraining the defendants from disturbing the plaintiff in carriage of the latter's business in the suit property. Subsequently, however, an application was filed for modification of the said injunction order at the behest of the defendants, seeking a direction upon the plaintiff to pay occupation charges at the rate equivalent to rent to the defendant.

Thereafter, the plaintiff took out a further application for an order to the effect that, if the defendant's prayer of modification was allowed, the plaintiff may be permitted to

deposit the occupation charges in court, since the petitioners have a right of prior purchase of the suit property as per Clause 11 of the lease deed.

Learned senior counsel appearing for the opposite party no.1 contends that the endeavour of the defendants/owners to decimate the property into shares and transfer the company itself by parts to a third-party, thereby, in effect, transferring the fixed assets thereof, including the suit property.

Learned senior counsel appearing for the opposite party no.1 further points out to a document annexed to the revisional application, in particular at page-147 thereof, which, according to him, indicates that the process of sale of shares has already commenced.

It is further contended that, although the plaintiff is agreeable to deposit the occupation charges in court, payment of the same to the lessor directly could hamper the plaintiff's right of prior purchase of the property at a value of Rs.10 crores, as stipulated in Clause 11 of the lease

agreement. Hence, it is contended that the amount may be directed to be deposited in court without prejudice to the rights and contentions of the parties. Upon taking instruction from his client, learned senior counsel appearing for the opposite party no.1 submits that, at best, the opposite party no.1 is agreeable to deposit the occupation charges in an escrow account without prejudice to the rights of the parties, to the limit of Rs.10 crores, which is the maximum price at which the opposite party no. 1 has to be given a prior right of purchase.

Upon considering the submissions of the parties, it is evident that the opposite party no.1 is not unwilling to put in occupation charges at a rate equivalent to the rent. However, it is apprehended, in view of the alleged actions of the defendant/petitioners that the lessor-company may transfer the property without granting any prior right of refusal to the opposite party no. 1.

At the present stage, in the absence of any counter-pleadings being on record on the part of the defendants, the plaint case has to

be taken to be tentatively correct for the limited purpose of considering the question of grant of injunction, modification and/or stay thereof.

In view of the specific allegation that the lessor is trying to transfer the suit property in violation of Clause 11 of the lease agreement, a *prima facie* case has been made out by the opposite party no.1 (plaintiff in the court below) regarding the apprehension of the property being sold out to a third-party without affording an opportunity of prior purchase as per the agreement to the opposite party no.1.

That apart, there is no further objection to payment of occupation charges.

Upon query of court, it is submitted by learned counsel that it would take around 50 (fifty) months to reach the limit of Rs.10 crores in the event the opposite party no.1 goes on paying occupation charges at the rate of rental as stipulated in the lease agreement. In order to obviate the curtailment of the right of the lessee of prior purchase and keeping in view the right of the lessor to get rent from the lessee till the property is

transferred and/or preempted, it would be appropriate if the opposite party no.1 is directed to pay occupation charges at the rate of lease rental at least till pendency of the appeal in the court below. Subject to such payments, the order of modification passed by the trial court, whereby the opposite party no.1 was directed to pay occupation charges to the lessor, ought not to be interfered with. The rights of the opposite party no.1 will be sufficiently protected in the event the payments are without prejudice to the rights and contentions of the parties in the suit and if the hearing of the appeals is expedited.

Accordingly, CO No.1189 of 2021 is disposed of by setting aside the impugned order, with the rider that the appellate court below shall dispose of Miscellaneous Appeal No.3 of 2021 and Miscellaneous Appeal No.4 of 2021, both arising out of Title Suit No.457 of 2020, pending before the District Judge at Chinsurah, District: Hooghly within one month from the date of communication of this order to the appellate court.

It is further made clear that the payments directed to be made by the opposite

party no.1 to the petitioners in lieu of occupation charges shall be without prejudice to the rights and contentions of the parties in the suit as well as the connected appeal and applications.

The trial court shall act on the communication of the learned advocates-on-record for the parties and/or server copy of this order without insisting upon prior production of a certified copy.

It is further clarified that the observations made herein are tentative, limited to the purpose of adjudicating the present revisional application and shall not influence the appellate court or the trial court in any manner. Both the courts below shall dispose of the matters pending before them independently and on their own merits without being influenced or prejudiced in any manner by any of the above observations.

There will be no order as to costs.

Urgent photostat certified copies of this order, if applied for, be made available to the parties upon compliance with the requisite formalities.

(Sabyasachi Bhattacharyya, J.)