

DL. January
16. 25, 2021

Through Video Conference

F.M.A.T. 902 of 2019

Mr. Abhijit Ray,
Mr. Santo Nandy,
Ms. Anwesha Halder,
...for the appellant.

Mr. Anupam Kumar Bhattacharya,
Mr. Anirban Dey,
...for the respondent no. 1.

Mr. Kaushik Dey,
Mr. Sujit Mitra,
...for the respondent no. 2.

The appeal is admitted. The records of this case need not be called for.

Mr. Anupam Kumar Bhattacharyya, learned advocate, appears for the respondent no. 1 and accepts notice of appeal through his junior, Mr. Anirban Dey, learned advocate, who lodged caveat on behalf of the respondent no. 1. Mr. Kaushik Dey, learned advocate, appears for the respondent no. 2 and accepts notice of appeal through his junior, Mr. Sujit Mitra, learned advocate.

We, therefore, treat the appeal ready as regards service and, by consent of the parties, take up the appeal for hearing by treating the same as on day's list.

This appeal has arisen out of an order dated August 1, 2019 passed by the learned Judge in-charge, Eleventh Bench, City Civil Court at Calcutta, in connection with an application filed by the appellant under Order XXXIX Rule 4 read with Section 151 of the Code of Civil Procedure.

The appellant is the defendant no. 2 in the suit. It is

curious to find that the learned trial judge instead of deciding the application under Order XXXIX Rule 4 read with Section 151 of the Code has disposed of the application under Order XXXIX Rules 1 and 2 read with Section 151 of the Code thereby resulting in complete travesty of justice and making the application under Order XXXIX Rule 4 of the Code nugatory.

Under Such Circumstances, the impugned order is modified by extending the ad interim order of injunction, passed on April 25, 2016 and made absolute by the order dated August 1, 2019, for a period of eight weeks from the date of communication of this order by either of the parties or until disposal of the application filed under Order XXXIX Rule 4 read with Section 151 of the Code of Civil Procedure, whichever is earlier.

The learned trial judge is requested to dispose of the application under Order XXXIX Rule 4 of the Code of Civil Procedure on merits as expeditiously as possible without granting any unnecessary adjournment to either of the parties peremptorily within the aforesaid period.

With the aforesaid observations, the appeal stands allowed.

In view of disposal of the appeal, nothing remains to be decided in the connected application for stay filed under CAN 9212 of 2019 and the same is, also, disposed of.

We make no order as to costs.

(Soumen Sen, J.)

(Aniruddha Roy, J.)

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