

S/L 1
05.01.2021
Court. No. 19
GB

C.O. 1579 of 2020

Jitendra Agarwal & Anr.
Vs.
The Secretary,
Ideal Regency Apartment Owner's Association
(Through Video Conference)

*Mr. Partha Pratim Roy,
Mr. Subhamoy Bhattacharya,
Mr. Shankar Mukherjee,
Ms. Ishani Kundu.*

...for the Petitioners.

*Mr. Dwaipayan Banerjee,
Mr. Abir Das.*

...for the Opposite Party.

This revisional application has been filed by the plaintiff in Title Suit No.627 of 2020, being aggrieved by an order dated October 14, 2020 passed by the learned District Judge at Alipore, District 24 Parganas (South), in Misc. Appeal No.125 of 2020.

The petitioners are aggrieved by refusal of the learned lower appellate court to grant ad interim order of injunction despite the water connection having been disconnected by the defendant/opposite party. It is the contention of the petitioners that water supply being an essential service could not be disconnected at the whim of the housing society. The water supply was given by the corporation and the opposite party has acted illegally by disconnecting the water supply. It is further contended that both the learned courts below

refused the ad interim injunction only on the ground that the water supply was disconnected nine months ago and the injunction was prayed for at the belated stage. Both courts observed that “delay had defeated equity”.

Mr. Banerjee, learned advocate appearing on behalf of the opposite party/housing society submits that the society had no other option but to stop water supply to the shop room of the petitioners as the petitioners have not paid the maintenance charges fixed by the society and the total dues payable by the petitioners from November 2017, amounts to Rs.1,86,200/- up to January, 2021.

I have considered the question of irreparable loss and injury and I find that supply of water is an essential service and it would be difficult for the petitioners to continue their business from the shop room in question without such supply. However, the balance of convenience and inconvenience in the facts of this case requires that the petitioners should pay maintenance charges to the housing society and also liquidate the arrears. The prima facie case here is that the petitioners have challenged the sudden enhancement of maintenance charges which compelled the petitioners to pay more than Rs.14,000/- per month compared to Rs.4,600/- which was paid earlier. The petitioners in the suit have questioned the sudden enhancement of the maintenance charges without any notice to the petitioners and behind their back.

These are issues to be decided in the suit. When the petitioners are occupying the shop room, the petitioners are liable to pay the maintenance charges at a reasonable rate till the application for injunction before the learned Civil Judge (Junior Division) 2nd Additional Court at Alipore is decided. Moreover, when the petitioners are using the property and which is managed by the association/opposite party, the petitioners must abide by certain terms and conditions. The petitioners cannot get water supply without paying the maintenance charges. It is also on record that the petitioners have failed to pay the maintenance charges, even at the admitted amount from the period November, 2017 to November, 2018. Thereafter the petitioners refused to pay the enhanced rate.

In my opinion, till the disposal of the injunction application by the learned Civil Judge (Junior Division) 2nd Additional Court at Alipore, the petitioners shall pay Rs.1,00,000/- within January 29, 2021. Upon payment of the first instalment of Rs.1,00,000/-, the water supply line should be restored to the petitioners' premises within 48 hours. From the month of February, 2021, the petitioners will go on paying maintenance charges of Rs.7,000/- per month exclusive of GST, to the society, in the same manner and within such time as is prevailing in the society.

In case of default of payment of any monthly maintenance charges, the society will be eligible to stop common facilities and supply of water to the petitioners'

shop. All payment and acceptance of maintenance will be made without prejudice and subject to the final decision of the learned Civil Judge (Junior Division) 2nd Additional Court at Alipore while disposing of the application for temporary injunction. As nothing remains to be decided in the appeal, Misc. Appeal No.125 of 2020 is disposed of. The observations made hereinabove are only for the purpose of passing an interim order in this revisional application. The learned Civil Judge (Junior Division) 2nd Additional Court at Alipore will proceed with the hearing of the application for temporary injunction in accordance with law and without being influenced by this order.

The learned advocate on record for the petitioners is directed to serve a copy of the injunction application as also the plaint upon the learned advocate for the opposite party within 06.01.2021. Written objection to the application for injunction to be filed within three weeks from receipt of the copies of the same. Parties are given liberty to approach the learned Civil Judge (Junior Division) 2nd Additional Court at Alipore for bringing forward the date of hearing of the application for temporary injunction. The application should be disposed of within a month from the next date to be fixed by the learned judge. It is also requested that the title suit be disposed of as expeditiously as possible, preferably within a period of one year from the date from disposal of the application for temporary injunction.

The revisional application is disposed of.

Urgent Photostat certified copy of this order, if applied for, be given to the parties on priority basis.

(Shampa Sarkar, J.)