

ORDER SHEET
APOT 87 OF 2021
WITH
CS 87 OF 2021
IA NO. GA 1 OF 2021
IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
ORIGINAL SIDE

KEJRIWAL SUGAR AGENCIES PVT LTD.
VS
RITU MANPURIA

BEFORE:

The Hon'ble JUSTICE I. P. MUKERJI

The Hon'ble JUSTICE ANIRUDDHA ROY

Date : 06TH JULY, 2021.

Appearance:
Mr. Suman Dutt, Adv.
...For the appellant

Mr. Jishnu Chowdhury, Adv.
Mr. Noelle Banerjee, Adv.
...For the respondent

The Court : We deeply appreciate the fairness shown by learned counsel on both sides. Because of this, we are able to dispose of this appeal today.

This appeal arises out of a transaction in sugar. The respondent/plaintiff as buyer had paid Rs.45,18,160/- as per the available records to the appellant/defendant seller. According to the prima facie finding of the learned single judge in his order dated 16th April, 2021, sugar worth about Rs.15 lakhs had been supplied. Prima facie, the learned judge felt that Rs.30 lakhs was in deposit with the appellant seller without their supplying any sugar.

On this prima facie case, he directed them to create a term deposit for that amount with any nationalized bank.

According to Mr. Dutt, learned counsel appearing for the appellant, this amounted to an order to provide security without giving an opportunity to his client to place their case on affidavit. In any event, according to learned counsel, there was no case for this kind of an order which would also be seen as an attachment before judgement.

In answer, Mr. Chowdhury, learned counsel appearing for the respondent, said that the fact that Rs.30 lakhs on account of his client was lying with the appellant was admitted and undeniable. Therefore, this kind of an order asking the appellant/defendant to furnish security is justified.

Whatever may be the case, any prima facie finding could only have been entered after the facts as pleaded by the respondent/plaintiff were fully traversed by the appellant/defendant in the affidavit-in-opposition to the application before the learned trial Court. An order for attachment before judgement or for furnishing security turns heavily on establishment of facts. In our view, at the ad interim stage, this order was not called for.

We record the submission of Mr. Chowdhury that for non-compliance with the impugned order, his client will not take any steps in contempt or otherwise against the appellant.

Therefore, there is no need for this Court to pass any formal order setting aside the impugned order.

We dispose of this appeal after dispensing with all formalities by directing that the application (GA No.1 of 2021) before the learned single judge be disposed of after directing the appellant/defendant to file their affidavit-in-opposition by 12th July, 2021 and the respondent/plaintiff to file their affidavit-in-reply by 19th July, 2021.

Our interim order dated 23rd June, 2021 shall continue till disposal of the interim application before the learned single judge.

While deciding the interim application after exchange of affidavits, the learned single judge will decide the prima facie case of the parties afresh on affidavits.

(I. P. Mukerji, J.)

(Aniruddha Roy, J.)