

24.02.2022
SL No.5
Court No.8
(gc)

**FMA 1384 of 2018
With
CAN 1 of 2017
(Old No: CAN 12264 of 2017)
with
CAN 2 of 2019
(Old No: CAN 9322 of 2019)**

**Nav Durga Barter Private Limited
Vs.
Sri Anil Kumar Agarwal**

(Via Video Conference)

Mr. Probal Kumar Mukherjee, Sr. Adv.,
Mr. Nabankur Paul,
...for the Appellant.

By consent of the parties, the appeal and the applications are treated as on the day's list and disposed of by this common order.

In spite of service, the respondent is not represented, nor any accommodation is prayed for on behalf of the respondent.

It appears from the previous orders that on 18th April, 2019, an order of injunction was granted restraining the defendant from transferring, alienating and/or encumbering the property mentioned in schedule 'A' of the plaint, initially for a period of four weeks and the said period was subsequently extended. The said interim order is still in operation. From the impugned order, it does not appear that the defendant had contended before the Trial Court that he had no title over the 'A' schedule property. However, in the impugned order, the Trial Court

proceeded on the basis that the defendant had no right to transfer the entire 'A' and 'B' schedule property of the plaintiff/company. The nature and extent of the right, title and interest of the defendant in respect of the 'A' schedule property was also not clearly stated in the order nor the defendant appears to have disclosed any document to show that he had interest in respect of some of the plots or properties mentioned in schedule 'A' of the plaint.

In view of the fact that the interim order granted earlier is still in operation and we have been informed that the suit has progressed substantially, we dispose of the appeal and the applications by confirming the interim order with a request to the learned Civil Judge (Senior Division) at Jalpaiguri to dispose of the suit as expeditiously as possible preferably within a period of six months from the next date fixed without granting any adjournment to either of the parties and subject to convenience of the learned Trial Judge.

We, however, make it clear that in absence of the defendant and documents clearly indicating the nature and extent of right, title and interest of the defendant over the 'A' schedule property, we continue with the said interim order leaving it for the Trial Court to decide at the trial of the suit without being influenced by any observation made by us in this order.

Mr. Probal Kumar Mukherjee, learned Senior Counsel appearing on behalf of the appellant has submitted that in terms of the agreement, the appellant had paid a sum of Rs.50,00,000/- (Rupees Fifty Lakhs only) as part consideration at the time of execution of the agreement.

We extend this interim order on condition that the appellant to establish his bona fide shall deposit a sum of Rs.50,00,000/- (Rupees Fifty Lakhs only) to the credit of the Title Suit No.89 of 2016 within three weeks from date and the said amount shall be invested with a nationalized bank in a short-term fixed deposit account yielding highest return till disposal of the suit. The Trial Court while disposing of the suit shall pass appropriate orders with regard to the deposit being made in terms of this order.

The impugned order is, accordingly, set aside.

Accordingly the appeal being FMA 1384 of 2018 and the applications being CAN 1 of 2017 (Old No: CAN 12264 of 2017) and CAN 2 of 2019 (Old No: CAN 9322 of 2019) stand disposed of.

However, there shall no order as to costs.

The appellant shall communicate this order to the learned Trial Judge for information and record.

All parties shall act on the server copies of this order duly downloaded from the official website of this Court.

(Ajoy Kumar Mukherjee, J.)

(Soumen Sen, J.)