23.06.2022
Item no.69
Ct. No.08
Saswata

FMA 2200 of 2016

Amitava Bhattacharyya
-vs-
S.B. Stitcher Private Limited & Anr.

None appears for the parties. Even on the earlier occasion, the parties were not represented for which the Coordinate Bench on 1st July 2021 directed the appeal to be listed under the heading "For Dismissal" on 5th July 2021.

The appeal is arising out of an order dated 8th May 2015 in connection with an application under Order 39 Rule 1 and 2 read with Section 151 of the Code of Civil Procedure filed by the plaintiff praying, inter alia, for temporary injunction against the defendants in respect of the suit property.

We have gone through the order impugned. It appears that it has been admitted by the parties after obtaining the lease for a period of 999 years from the State Government, the defendant no. 1, the present appellant as the proprietor of M/s. S.B.Stitcher entered into an agreement with the defendant no. 2, Tamanna Securities Private Limited on 6th October 2004 for assigning his leasehold right in favour of Tamanna in respect of the suit land and received payment of the full consideration amount to the tune of ₹30,00,000/- which was recorded in a subsequent supplemental agreement dated 15th October 2004. Thereafter, the defendant no. 1 who is the present appellant as the proprietor of M/s. S.B.Stitcher executed a power of attorney dated 15th October 2004 in favour of Bharat Nahata and Hemant Nahata, both being the directors of the plaintiff-company for development of the suit land after obtaining sanctioned building plan and management of the suit property. Bharat and Hemant agreed to finance the plaintiff-company for development on the suit land and the defendant no. 1 agreed to transfer the suit land in favour of the plaintiff –company whereupon one tripartite agreement dated 1st November 2006 in the form of memorandum of understanding was entered into among the defendant no. 1 being the proprietor of the M/s. S.B.Stitcher, defendant no. 2 Tamanna Securities Pvt. Ltd. and the plaintiff-company, wherein the plaintiff-company would develop the suit land and pay ₹30,00,000/- to the defendant no. 1 on transfer of lease of the suit property in plaintiff's favour on completion of all necessary formalities and thereafter, the defendant no. 1 would refund the sum of ₹30,00,000/- in favour of the defendant no.2 company.

The plaintiff appears to have produced the photocopies of the lease deed dated 20th April 1992, the agreement for assignment dated 6th October 2004, supplemental agreement dated 15th October 2004, power of attorney dated 15th October 2004 and tripartite agreement dated 1st November 2006 in support of his right to claim injunction.

It appears that the supplemental agreement dated 15th October 2004 and the tripartite agreement dated 1st November 2006 was acted upon by and between the parties. The question of repaying the amount of ₹30,00,000/- by the defendant no. 1 company to the defendant no. 2 company would arise as soon as the plaintiff-company would make payment of ₹30,00,000/-to the defendant no. 1 for obtaining the lease of the suit property in terms of the tripartite agreement dated 1st November 2006, i.e. the Memorandum of Understanding. According to the cause of action of the defendant no.2-company for receiving the sum of ₹30,00,000/- from the defendant no.2-company does not appear to have been arisen at the present moment. However, the property cannot be dealt with without protecting the right of the plaintiff who has acted upon the agreements as would appear from several documents relied upon the Learned Trial Judge in granting an order of injunction in favour of the plaintiff. The apprehension that the defendant no. 2-company is likely to create third party interest as they have denied the plaintiff's right to the property and was likely to deal with such property is evident from the pleadings and materials available before the Trial Court.

Under such circumstances, we feel that the Learned Trial Judge was justified in directing the plaintiff and the defendant no.1-company to maintain status quo with regard to possession, nature, character and creation of any third party interest in respect of the property till disposal of the present suit. The order secures preservation of rights of the parties during pendency of the suit. Any alienation would result in irreparable loss to the plaintiff who appears to have discharged its obligation and acted on the basis of the agreements. The views howsoever widely warded are prima facie.

Considering the defendant no.1/appellant has a stake in the property, we feel that the suit should be heard and disposed of at the earliest.

It is needless to mention that the Learned Trial Judge shall decide the suit on merits without being influenced by any of the observations made in the order dated 8th May 2015 or by this Court while affirming the said order. Observations are only for the purpose of deciding the injunction application and the appeal arising out of the application.

While confirming the interim order, we direct the Learned Civil Judge (Senior Division), 2nd Court, Barasat, North 24 Parganas to dispose of the suit as expeditiously as possible preferably within a period of one year from the date of communication of this order subject to its convenience and without granting any adjournment to either of the parties unless it is unavoidable.

Since, the parties are not represented, we direct the Registrar (L & OM) to communicate this order to the Learned Civil Judge (Senior Division), 2nd Court, Barasat, North 24 Parganas for information and doing the needful.

The appeal being FMA 2200 of 2016 stands disposed of with the aforesaid direction.

[Soumen Sen, J.]

[Siddhartha Roy Chowdhury, J.]