

05.05.2022
Item No.4
Ct. No.7
CHC
(disposed of)

C.O.210 of 2022

**M/S Ganga Developers
Vs.
Manish Kumar Rai**

Mr. Surya Prasad Chattopadhyay,
Mr. Arjun Samanta
...for the petitioner

Mr. Sudipta Kumar Bose,
Ms. Lipika Nath
...for the opposite party

The subject-matter of challenge in this revisional application is against the order dated 18th November, 2021, passed by learned Additional District Judge, 1st Court, Sealdah, in Misc. Appeal No.43 of 2021, directing both the parties to maintain status quo in respect of title, nature and character of 36% of residential portion of the suit property of the plaintiff till the date, as stipulated therein.

Mr. Chattopadhyay, learned advocate appearing for the petitioner submits that plaintiff is simply a stranger to the suit having no nexus with the developing agreement. The developing agreement was entered into between the petitioner and some partners on 8th December, 2014. There were as many as four partners, who entered into the developing agreement, referred above, with petitioner/defendant.

Adverting to copy of the plaint, learned advocate for the petitioner submits that plaintiff happens to be the son of one of partners as well as constituted attorney of one of the partners. Other partners, according to the petitioner have not joined in the suit rendering the suit to suffer from serious party defects.

It is the contention of the learned advocate for the petitioner that learned first lower appellate court ought not to have granted ad interim order of injunction in a case, when institution of the suit was bad under the provisions of the law.

The original developing agreement entered on 8th December, 2014, subsequently was amended by a supplementary developing agreement on 5th November, 2019, which was registered on 3rd March, 2020, wherein the owners allocation were restricted to 36% of total constructed area. The trial court has rejected prayer for ad interim order of injunction subscribing the reasons therefor. The rejection of the prayer for ad interim order of injunction was carried in appeal and in connection therewith, ad interim order of injunction was granted.

It is also contended by the learned advocate for the petitioner that by reason of such ad interim order of injunction, there has been serious prejudice caused to the petitioner developer, and the entire project pertaining to the developing agreement had to suffer

serious damage. Completion of Project is thus made to face a serious consequence.

Learned advocate for the petitioner, thus proposes for vacating the ad interim order of injunction and/or by modifying the ad interim order of injunction, so that uncompleted construction may be concluded.

Per contra, Mr. Bose, learned advocate appearing for the opposite party/plaintiff/Caveator submits that the points now raised, may not be gone into in exercise of authority available under Article 227 of the Constitution of India. Against the rejection of the prayer for ad interim order of injunction, an appeal was preferred vide Misc. Appeal No.43 of 2021, and in connection therewith order of ad interim order of injunction was granted directing both the parties to maintain status quo to the extent of 36% of residential portion of the suit property.

Having considered the submission of both sides, it appears that the scope of Article 227 is very limited.

Point now raises, principally relates to nitty-gritty of institution of suit, which according to plaintiff has been illegally instituted making serious party defects. Such points may even be raised not only before the trial court, but also in First Miscellaneous Appeal, wherein the ad interim order of injunction was granted.

Admittedly, the Miscellaneous Appeal is pending. There is no jurisdictional error committed as regards

filing of appeal before first lower appellate court against the rejection of prayer for ad interim order of injunction, whatever might be the party defects as alleged to have occasioned in this case.

In the fitness of the things, the petitioner may raise all such points now raises before the first lower appellate court in Miscellaneous Appeal No.43 of 2021.

Petitioner is at his liberty to file a vacating application as regards the prayer for ad interim order of injunction already granted by the first lower appellate court.

It is thus clarified that if any vacating application is filed, taking the grounds, as referred hereinabove, the same shall be addressed to by the first lower appellate court, providing sufficient opportunity of hearing to either of the parties to this case, and resolve the issues rendering a decision in accordance with the provisions of the law.

This would not, however, prevent the court below to dispose of the appeal finally in terms of the points raised by the petitioner expeditiously as possible, preferably within ten (10) weeks from the date of communication of this order.

With this observation/direction, the revisional application stands disposed of.

Urgent certified photostat copy of this order, if applied for, be given to the parties as expeditiously as possible on compliance of all necessary formalities.

(Subhasis Dasgupta, J.)