

01.07.2022
Item No.276
Ct. No.7
CHC
(disposed of)

C.O.1037 of 2022

**M/S Leonine Abode Private Limited & ors.
Vs.
M/S NKS Project (P) Limited & ors.**

Mr. Debnath Ghosh,
Mr. Srijib Chakraborty,
Mr. Bimalendu Das,
Mr. Aditya Mondal
...for the petitioners

Mr. Sanjoy Bose,
Mr. P. B. Mullick
...for the opposite parties

The affidavit-of-service furnished by the petitioners
be taken on record.

The subject-matter of challenge in this revisional
application is against a decision passed in Misc.Appeal
No.193 of 2018 by learned Additional District Judge,
Fast Track Court-I, Alipore, vacating order of status
quo.

Admittedly, in a suit for partition the trial court
refused to grant interim injunction on 26th July, 2018.
Refusal of ad interim order of injunction was then
carried in appeal vide Misc. Appeal No.193 of 2018.

The order of status quo was directed to be
maintained as per order of first lower appellate body on
4th August, 2018.

Mr. Ghosh, learned advocate appearing for the
petitioners submits that the order of status quo was

ultimately vacated on 19th April, 2022 by the order impugned.

The order of status quo, according to Mr. Ghosh was very much operative for about four (04) years (approx.).

The contention expressed by Mr. Ghosh is that an award has been passed without providing any notice to the petitioners, and as a result of which, award already granted has been challenged for setting aside the same taking out an appropriate application, which is pending in the concerned proceeding.

Mr. Ghosh submits that order of status quo should be there for the preservation of the suit property pending determination of the share of the parties in the partition suit.

Per contra, Mr. Bose, learned advocate appearing of the opposite parties disputes with the submission raised by Mr. Ghosh, contending that the subject property is not in the possession of either of the parties to this case, but it is, however, in the possession of the third party.

After vociferously raising objection, learned advocate for the opposite parties submits that without deciding the possession of subject property, there should not be any order directing parties to maintain status quo in respect of nature, character and possession of the suit land.

Learned advocate for the opposite parties thus submits that the possession of the subject property being with third party, such possession should not be disturbed by an order of status quo.

Having considered the submission of both sides, it appears that the order passed in Misc. Appeal vacating the order of status quo has been passed against the refusal of ad interim order of injunction, when obviously opposite parties had no occasion to present their case supported by documents.

Significantly, the order of status quo granted by the appellate court on 4th August, 2018 was allowed to be continued till vacating such order on 19th April, 2022.

When injunction application has not yet been heard out finally in terms of the settled principle of law, the pending injunction application needs to be disposed of. With the disposal of temporary injunction application, the controversy that has been surfaced with regard to the possession of the suit properties, may be streamlined giving a hearing to the opposite parties for the purpose.

The revisional application, is, thus disposed of directing the court below to ensure expeditious disposal of pending injunction application under Order 39 Rule 1 and 2 C.P.C., providing sufficient opportunity of hearing to either of the parties to this

case, but without granting any unnecessary adjournment, preferably within a period of ten (10) weeks from the date of communication of this order.

Pending decision, within such stipulated period of time, let there be an order directing parties to maintain status quo as regards nature, character and possession of suit property.

While endeavouring expeditious disposal of injunction application, the opposite parties may be given adequate opportunity to file objection against the injunction application, if not already filed, within five days from the date of communication of this order.

Petitioners are directed to make communication of this order to the learned court below.

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.)