

7 02.5.2022
Sc Ct. no.8

FMAT 135 OF 2022
with
I.A. No. CAN 1 OF 2022

Smt. Anita Ghosh

Vs.

Sri Tarak Pal

Mr. Patha Pratim Roy
Mr. Anirban Das
Mr. Sarbananda Sanyal.

.... For the Defendant/
Appellant

The appellant/defendant is the owner of the property in question. The appellant alleged that there is no agreement between the parties. However, the documents, *prima facie*, show that the appellant has received Rs.2 lakh for construction of a house.

The plaintiff/respondent contends that he had paid Rs.2 lakh as a consideration money for a development agreement to be entered into between the parties. There is no agreement in writing. On the basis of two money receipts issued in favour of the defendant acknowledging receipt of Rs.2 lakh towards development of the property, the plaintiff/respondent filed the suit alleging that inspite of repeated requests, the defendant/appellant has not executed the development agreement and now is in the process of creating third party interest in respect of the suit property.

The learned counsel for the defendant/appellant submits that the suit is undervalued and is liable to be rejected under Order 7 Rule 11(c) of the Code of Civil Procedure. It is further submitted that the order was passed overlooking the fact that a caveat was lodged by the defendant/appellant and in its earlier order, the trial court had recorded that the injunction application would be taken on 24th March, 2022. Notwithstanding the same, the trial Court heard the injunction application ex parte on 22nd March, 2022 and passed ex parte ad interim order without hearing the defendant/appellant.

It appears from the record that the injunction application was fixed for hearing on 24th March, 2022 after noticing that a caveat has been lodged by the defendant/appellant.

Mr. Partha Pratim Roy, learned advocate for the defendant/appellant, is correct in his submission that on 22nd March, 2022, the matter could not have been heard without the Court being satisfied that inspite of service upon the caveator, the caveator remained absent in the said proceeding.

However, it reveals that on 24th March, 2022, the injunction application was heard and the matter was fixed on 11th April, 2022 for further hearing. It is not clear from the order dated 24th March, 2022 if the defendant/appellant had appeared.

Mr. Roy further submits that due to lack of notice, the defendant/appellant could not appear before the trial Court.

Be that as it may, nothing had prevented the defendant/appellant on 11th April, 2022 to pray for vacating of the interim order on the ground that the said ex parte ad interim order was passed without hearing the defendant/appellant.

The defendant/appellant has now filed an application under Order 39 Rule 4 of the Code of Civil Procedure.

In view of the fact that the initial order was passed ex parte inspite of lodging of the caveat, we direct the trial Court to decide the application filed by the defendant/appellant under Order 39 Rule 4 as expeditiously as possible and preferably within a period of eight weeks from the date of communication of this order without granting unnecessary adjournment to any of the parties subject to the convenience of the trial Court.

The ad interim order passed by the trial court shall be restricted to, for a period of eight weeks from date.

The trial Court shall decide the said application uninfluenced by any observation made in this order or by the previous order passed by the trial Court.

In view of the above, the appeal is disposed of. Accordingly, the application for stay being I.A.No. CAN 1 OF 2022 is also disposed of.

However, there shall be no order as to costs.

Urgent Photostat certified copy of this order, if applied for, be furnished expeditiously.

(Sugato Majumdar, J.)

(Soumen Sen, J.)