

02.03.2022
SL No.8
Court No.8
(gc)

**FMA 905 of 2021
With
CAN 1 of 2021
With
CAN 2 of 2021
With
CAN 3 of 2021**

**Kusvin Vyapaar Pvt. Ltd.
Vs.
Janardan Nirman Pvt. Ltd.**

(Via Video Conference)

Mr. Saptansu Basu, Sr. Adv.,
Mr. Jayanta Sengupta,
Mr. Shayak Mitra,
Mr. Abhijit Sarkar
...for the Appellant.

Mr. Ashok Kr. Banerjee, Sr. Adv.,
Mr. Debabrata Banerjee,
Mr. Anirban Ray, Ld. G.P..
Mr. Debangshu Dinda,
Mr. Rabindra Kr. Mitra,
Mr. Kausik Chatterjee,
...for the Respondent.

Affidavits and pleadings filed by the parties in Court today be kept with the record.

We have heard the learned Counsel for the parties.

The appellant has come up against an order dated 24th March, 2021 passed by the learned Civil Judge (Senior Division), 9th Court at Alipore in connection with an application filed by the plaintiff/appellant under Order XXXIX Rule 1 & 2 read with Section 151 of the Code of Civil Procedure refusing to pass ad-interim order of injunction in favour of the appellant. In refusing to pass such ad-interim order, the learned Trial Judge has taken

into consideration that although the plaintiff filed a photocopy of the hire purchase agreement dated 19th December, 2017 executed between KND Engineering Technologies Ltd. and the defendant, but no original agreement was produced from the side of the plaintiff to prima facie show that the concerned equipment was agreed to be used between the plaintiff and the defendant. The learned Trial Judge also had taken note of the e-mail dated 29th November, 2018 indicating its apparent acceptance of the agreement of 1st November, 2018 and acknowledging the liability to pay a sum of Rs.11 lacs as the monthly rental to the plaintiff. However, in absence of any document being produced in support of such claim, the injunction application was refused.

At the ad-interim stage, the Court is required to find out whether the appellant was able to make out a prima facie case and an arguable case on merits apart from balance of convenience, irreparable loss and injury that are likely to be caused in the event the said order is refused. From the narration of the facts itself it would appear that the appellant was able to make out a prima facie case by referring to certain documents and agreements, which, prima facie show that there has been some kind of transaction concerning the plaintiff and the defendant. If there has been a transfer of the equipment in favour of the plaintiff in terms of the agreement dated 19th December, 2017, then argument of Mr. Ashok Kr.

Banerjee, learned Senior Counsel appearing on behalf of the defendant/respondent that the plaintiff would have no right to proceed against the defendant, may not survive. Ordinarily, the Appellate Court should put itself to the same position as that of the Trial Court to consider whether in the given facts and circumstances of the case, an ad-interim order is called for, however, it does not restrict the Court to invite the opposite parties to have their say on the prayer of the appellant for an ad-interim order at the appellate stage. The principal argument appears to be that the vendor of the appellant has been referred to the Tribunal and the reference was admitted on 30th August, 2018 and in order to avoid such proceeding, the appellant has filed the suit against the defendant. The principal question that would obviously come before the Trial Court and for the Trial Court to decide whether title was transferred in favour of the appellant in respect of the equipment presently under the use of the defendant and if it is in the affirmative, then the provision of I.B.C. may not have any effect on the suit.

In order to preserve the interest of the plaintiff over the equipment forming the subject-matter of the suit, we restrain the defendant from alienating, encumbering and/or creating any third party interest in respect of the equipment and to keep the appellant informed about the location of such equipment till the matter is finally heard and decided by the learned Trial Court.

A copy of the plaint and the injunction application shall be served upon Mr. Debangshu Dinda, Advocate-on-record on behalf of the respondent within 48 hours from date.

The respondent shall file his objection to the injunction petition within two weeks from the date of service. Reply thereto, if any, shall be filed within two weeks thereafter.

Upon completion of all pleadings, the parties shall immediately mention the matter before the learned Trial Judge with a request to dispose of the injunction application at the earliest subject to the convenience of the learned Trial Court. All points including the question of maintainability of the suit is kept open to be decided by the learned Trial Judge at the time of disposal of the injunction application without being influenced by any observation made by this Court in this order.

With the aforesaid observation, the appeal being FMA 905 of 2021 and the applications being CAN 1 of 2021, CAN 2 of 2021 and CAN 3 of 2021 stand disposed of.

However, there shall be no order as to costs.

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.)