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C.O. 1402 of 2022

**Maple Mercantile Private Limited
Vs
Suraj Shaw & Ors**

Mr. Sourojit Dasgupta,
Ms. Kumkum Mukherjee, ... For the petitioner.

Mr. Rudraman Bhattacharya,
Mr. Saptarshi Banerjee,
Mr. A. Banerjee,
... For the opposite party Nos. 4 to 6.

Admittedly, there has been an order passed by the Court below in Title Suit No. 934 of 2021 granting ad interim order of injunction on 23rd September, 2021. That for having made suppression of material facts, the opposite parties/defendants filed an application for vacating ad interim order of injunction under Order 39 Rule 4 CPC.

The Court below by the orders impugned declined to extend the ad interim order of injunction for an appropriate application not being moved, though the same was filed. Subsequently, the plaintiff/petitioner filed a recalling application, which was rejected by the Court below declining to recall to its own order.

Learned advocate appearing for the petitioner upon adverting to the petition, proposing recall of order dated 16th March, 2022 declining to extend the interim order, submits that sufficient explanation has been provided therein, disclosing sudden illness of

the learned advocate appearing in the Court below for the plaintiff, and her early departure from the Court, on such score.

Learned advocate appearing for the opposite parties disputes with the submission, made by the learned advocate for the petitioner, submitting that mere filing of a petition would not automatically extend the interim order of injunction granted by the Court below. The lawyer filing the relevant application is thus under obligation to move the same, and to satisfy the Court in support of the proposed prayer for extension of interim order of injunction, learned advocate for the opposite parties argues.

Supporting the order of the Court below, learned advocate appearing for the opposite parties submits that when there has been material suppression of facts, there cannot be any revival of the interim order of injunction, even on the ground of sudden illness suffered by the learned advocate for the plaintiff in the Court below.

Having considered the submission of both sides, it appears that the prayer for extension of the interim order of injunction was refused for an application, though filed, not being moved.

It is the settled proposition of law that there cannot be automatic extension of interim order in a

routine manner, unless the Court is satisfied with the facts presented and pressed before a Court of law.

Ordinarily, it is desirable that an application for extension of interim order of injunction should be moved, but at the same time, due to the alleged illness of the learned advocate appearing in the Court below, the innocent litigant should not be made to suffer. There has been explanation offered in the petition praying for recalling of order, dated 16th March, 2022, which the Court below declined to consider the same so as to extend the ad interim order of injunction upon recalling its own order.

It is thus clear that there has been no merited disposal with regard to the prayer made by the opposite parties challenging the ad interim order of injunction upon resorting to an application under Order 39 Rule 4 CPC.

The vacating application not being a merited disposal, the same needs to be resolved providing an opportunity of hearing to either of the parties to this case.

The impugned orders dated 16th March, 2022 and 29th April, 2022 passed by Civil Judge (Senior Division), 10th Court, Alipore in Title Suit No. 934 of 2021 are thus set aside with a direction upon the Court below to hear out the vacating application filed by the opposite parties under Order 39 Rule 4 CPC

read with injunction application under Order 39 Rules 1 and 2 of the CPC, preferably within a period of two months (02) from the date of communication of this order to the Court below.

The Court below is further directed to take into account the alleged suppression of material facts, as proposed by the learned advocate for the opposite parties, while endeavouring exercise to ensure expeditious disposal of applications mentioned hereinabove.

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

Urgent photostat certified copy of the order, if applied for, be given to the parties on usual undertakings.

(Subhasis Dasgupta, J)