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Ct-08

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FAT 247 of 2021
with
I.A No. CAN 1 of 2021

Birendra Kumar Roy
Vs.
Skipper Limited & Ors.

Mr. Rahul Karmakar
Ms. Papiya Roy
... For the Appellant

Mr. Arnab Sardar
... For the Respondent no. 1

Mr. Abhrajit Mitra, Sr. Adv
Mr. Santanu Chatterjee
Mr. Satadeep Bhattacharya
Mr. Uttam Sharma
... For the Respondent no. 2

This matter is appearing in today's list under the heading "Application". However, by consent of the parties the appeal is also taken up by treating the same as on day's list along with the application being CAN 1 of 2021.

The plaintiff has filed a suit for declaration and permanent injunction praying for a direction to restrain the defendants from trespassing into the suit premises. The plaintiff alleged that the plaintiff is one of the trustees in Bankim Chandra Roy Trust.

The defendant no. 1 is the owner and occupier of an adjacent premises. It is alleged that the defendant no. 3, representing himself as the Chief Executive Officer of the defendant no. 1, attempted to trespass into the areas under occupation of the plaintiff and it caused extensive damage of the boundary wall standing between the two premises. After the summons

being served upon the defendant no. 2, the said defendant filed an application for dismissal of the suit under Order VII Rule 11 of the Code of Civil Procedure. In the said application, it was alleged that the suit was filed by suppression of material facts and was bad for non-joinder of necessary parties and that the suit is also otherwise not maintainable in absence of the other trustees and that the allegations in the plaint are vague, lacking of material particulars and does not disclose any cause of action.

The learned trial judge has rightly taken up the application for rejection of plaint filed under Order VII Rule 11 of the Code of Civil Procedure and on consideration of the materials the learned Judge allowed the application for rejection of plaint on the ground that the suit is barred by Order VII Rule 11(d) of the Code of Civil Procedure, as the Kolkata Municipal Corporation is the only appropriate authority to deal with the irregularity with regard to any construction. However, from the averments made in the plaint, it does not appear that the said suit is barred by law.

The other contentions raised by the defendant no. 2 is that the suit is bad for non-joinder of parties and the plaintiff cannot sue without making other co-trustees as co-plaintiffs for the purpose of deciding the said application.

We have gone through the plaint. The allegation is of trespass. During the evidence relevant record of the Corporation is required to be produced for the purpose of ascertaining the nature and extent of trespass and whether there is any unauthorised construction. But it does not mean that K.M.C is the civil court to decide such dispute. Moreover, we find that other

trustees were made parties in the suit as defendants and there is no conflict of interest and in any event the plaintiff can always sue in the individual capacity, if it is found that the other trustees are not acting for the benefit of the trust. This does not make the suit “not maintainable”. Moreover, the application for rejection of the plaint does not contain any ground on which a plaint can be rejected under the said provision of law.

In view of the fact that the said judgment and decree was passed on a total misconception of law, the impugned judgment passed by the trial court is set aside.

Mr. Abhrajit Mitra, learned senior counsel appearing on behalf of the respondent no. 2 and Mr. Arnab Sardar, learned counsel appearing on behalf of the respondent no. 1 submit that the interim order may be confirmed till the disposal of the suit.

The interim order passed in Order no. 2 dated 11th November, 2017 stands revived and continues to remain operative till the disposal of the suit since the principal relief is claimed against the respondent nos. 1 to 3, and the respondent nos. 1 and 2 have no objection to the continuation of the said interim order.

In view of above order, the appeal and the application for injunction being CAN 1 of 2021 stand disposed of along with the injunction application pending before the learned trial court.

The trial court is directed to expedite the suit as early as possible without being influenced by

any observations made by us, if required, by passing peremptory directions with regard to procedural matters in order to make the suit ready for hearing.

(Ajoy Kumar Mukherjee, J.) (Soumen Sen, J.)