

23.08.2022
Item No.11
Ct. No.7
CHC
(disposed of)

C.O.1831 of 2022

**Nemai Chandra Roy Karmakar @ Nemai Roy
Vs.
Sarada Construction**

Mr. Tanmoy Mukherjee,
Mr. Arijit Banik,
Mr. Souvik Das,
Mr. K. R. Ahmed,
Mr. Rudranil Das

...for the petitioner

Mr. P. R. Mitra,
Mr. A. K. Roy

...for the o.p./Caveator

The appellate decision passed in Misc. Appeal No.04 of 2022 of learned Additional District Judge, Fast Track Court-V, Barasat, North 24 Parganas, reversing the order of the trial court, granting order of ad interim of injunction in the form of *staus quo*, is under challenge in this case.

Mr. Tanmoy Mukherjee, learned advocate appearing for the petitioner upon adverting to Order 39 Rule 3 proviso C.P.C. submits that the trial court was satisfied with the urgency of the circumstances exposed in the case, apart from testing the *prima facie* case established in context with the principles for grant of injunction, and ad interim order of injunction granting *status quo* to be mentioned was passed.

The appellate court has reversed the order of the trial court mechanically holding it to be devoid of reasons.

It is submitted by Mr. Mukherjee that developing agreement was entered into between the parties sometime in 2010, and till date, there has been no construction undertaken by the opposite party/Caveator in consonance of the terms of the agreement, and as a result of which, the developing agreement has been cancelled by the petitioner being disgusted with the conduct of the promoter/developer/opposite party.

It is further contended by Mr. Mukherjee that Appeal court has not truly gone into the facts presented and pressed while reversing the order of the trial court.

Per contra, Mr. P.: R. Mitra, learned appearing for the opposite party submits that in spite of existence of an arbitral clause for resolving a dispute between the parties, the petitioner has not approached for arbitration, and upon making suppression of facts, has proceeded to obtain an ad interim order of injunction behind the back of the opposite party.

Supporting the order of the appellate court, the learned advocate for the opposite party further replies that the subject property is under possession of the opposite party, and there is no need of any order for

preservation of the same pending decision of injunction application.

Having considered the submission of both sides, it appears that injunction application under Order 39 Rule 1 and 2 C.P.C. has not yet been disposed of, which is pending for decision before the court below.

The opposite party in the meantime, has furnished written objection so as to make the injunction application matured enough for hearing.

When the subject property, under reference, is claimed to be in possession of the opposite party, there will be no prejudice caused to either of the parties to this case, if preservation of the properties, be maintained with a rider that there will be no third party interest created pending decision of application for injunction, and that will subserve the purpose of justice.

The impugned order is thus modified directing preservation of the subject property be maintained, allegedly under possession of defendant/opposite party with a rider that there will be no third party interest created in respect of such subject property till the decision of application for temporary injunction.

The court below, as such, is directed to dispose of the application for temporary injunction within four months providing sufficient opportunity of hearing to either of the parties to this case, but without granting

any unnecessary adjournment, unless it is extremely unavoidable.

Both parties are at liberty to press their respective case supported by documents in connection with prayer for injunction, and the court below shall dispose of the injunction application in accordance with the law.

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.)