

(23)
12.07.2022
(p.jana)

IN THE HIGH COURT AT CALCUTTA
CIVIL REVISIONAL JURISDICTION

CO No. 1892 of 2022

Sri Sudip Kumar Dutta @ Sudip Kr. Dutta
-versus-
M/s Lokenath Projects @ M/s Loknath Project & anr.

Mr. Arijit Bardhan,
Mr. Vivekananda Bose,
Ms. Deblina Chattaraj,
... for the petitioner/defendant.

Mr. Bhaskar Ghosh, Sr. Adv.
Mr. Asit Sanyal,
Mr. Arun Kumar Das,
Mr. Siddhartha Paul,
... for the opposite party no. 1/plaintiff.

This defendant no.1 in a suit for declaration is the petitioner of the present application under Article 227 of the Constitution of India.

The said suit being Title Suit No. 388 of 2022 is pending before the 2nd Court of learned Civil Judge (Senior Division) at Barasat, District : 24 Parganas (North).

In the said suit, the learned Trial Judge on May 12, 2022 passed an ad interim order of injunction restraining the petitioner from interfering with the matter of construction and/or from dealing with the disposal of the developer's allocation in the suit property till June 15, 2022. The said ad interim order of injunction was subsequently extended time to time.

The petitioner assailed the said order of injunction in the connected Misc. Appeal No. 57 of 2022.

The said appeal is pending before the learned Additional District Judge, Fast Track Court- II, Barasat in Misc. Appeal No. 57 of 2022.

The prayer of the petitioner for stay of operation of the order under challenge in the said appeal was refused by the Appeal Court below vide order no. 3 dated June 14, 2022. The said order is under challenge in the instant revisional application.

Mr. Arijit Bardhan, learned counsel for the petitioner submits that the suit cannot survive for a moment as it is absolutely barred under law but the petitioner could not file an application under Order VII Rule 11 of the Code of Civil Procedure since copy of the plaint was not served upon him, however the copy of the plaint since has now been served upon his junior along with some documents under a firisti, his client intends to file an application under Order VII Rule 11 of the Code immediately. He files a photocopy of the said firisti, which is taken on record.

Mr. Bardhan on instruction, submits that if the petitioner gets the opportunity to file an application under Order VII Rule 11 of the Code, he would not press the connected misc. appeal.

In view of the said submission of Mr. Bardhan, CO 1892 of 2022 is **disposed of** with the following order:-

i. The petitioner is at liberty to file an application under Order VII Rule 11 of the Code by July 18, 2022.

ii. The application under Order VII Rule 11 of the Code, if filed, shall be disposed of first before the application for injunction and must be within one available effective working month of the said Court from the date of filing of the said application and in doing so, shall not entertain the prayer of the parties for any

unnecessary adjournment. It is made clear that this Court is not expressing any opinion about the merit of the said application; it is for the learned Trial Judge to decide the same in accordance with law.

iii. After the disposal of the said application under Order VII Rule 11 of the Code and depending upon its outcome, the application filed the plaintiff under Order XXXIX Rules 1 & 2 of the Code shall be disposed of expeditiously in accordance with law.

iv. The Misc. Appeal No. 57 of 2022(**Sudip Kumar Dutta -vs.- M/s. Lokenath Projects and others**) is dismissed as not pressed.

There shall be no order as to costs.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties subject to compliance of all requisite formalities.

(Biswajit Basu, J.)