

Item-21. 21-09-2022

FMA 1506 of 2011
CAN 1 of 2011 (old CAN 9583 of 2011)

sg

Ct. 8

Amit Kumar Ghosh
Versus
Brindaban Ghosh & Ors.

Mr. S. Pal Choudhuri, Adv.
Ms. Diya Nandi, Adv.
...for the appellant

The appeal is directed against Order no. 24 dated 17th August, 2011 passed in connection with an application for injunction in a suit for declaration and permanent injunction.

As on date, we feel that the said order has lost its force. Nothing would have prevented the appellant to bring it to the attention of the learned trial court that there is error apparent on the face of the order as record would show that notice was served upon the defendants.

The learned trial judge, however, recorded that in absence of service of notice upon the defendants, the injunction petition could not be heard. Twelve long years have passed since the impugned order was passed.

We find from the order dated 29th September, 2011 that the appellant was directed to serve copies of the application for injunction filed under CAN 9583 of 2011 on the respondent nos. 1 to 4 and their learned advocate in the court below and the appellant was exempted from serving any notice of appeal upon the defendant nos. 5, 6 and 7 at the risk of the appellant. Record would show that thereafter, the appeal did not progress and the appeal was delisted on 16th June, 2015 at the instance of the appellant.

Having regard to the aforesaid facts, we are not inclined to interfere with the order at this stage.

We dispose of the appeal and the connected application by directing the trial court to dispose of the injunction application on merits unless it is disposed of in the meantime, upon the appellant serving fresh notice upon the respondent/opposite party nos. 1, 2, 3 and 4 against whom relief has been claimed in the suit and in the injunction petition.

The plaintiff shall satisfy the trial court with regard to service of notice and only thereafter, the trial court shall consider the injunction application on merits.

The learned trial judge is also requested to give peremptory direction for filing written statement by the contesting defendants/respondents and in the event of failure to comply with the peremptory direction, the suit may proceed ex parte against such of the defendant/s who would fail to file written statement/s in spite of peremptory direction. The trial court thereafter shall also pass peremptory direction with regard to procedural matters in order to make the suit ready for hearing and conclude the trial as early as possible without granting any unnecessary adjournments to either of the parties.

The appeal and the application, accordingly, disposed of. However, there shall be no order as to costs.

(Uday Kumar, J.)

(Soumen Sen, J.)