

21.01.2022

Ct. 21

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C.O. 2153 of 2021

(Via Video Conference)

M/s Disha Construction a Partnership Firm & Ors.

-Vs-

Smt. Soma Ghosh & Ors.

Mr. Sanjay Mukherjee

Mr. Anirudhya Dutta

... for the petitioners

Mr. Faizilul Haque,

Ms. Manisha Nath,

...for the K.M.C.

The petitioners being the defendant no. 1 to 4 in Title Suit No. 65 of 2020 have filed the application under Article 227 of the Constitution of India challenging the order dated 22.11.2021 passed by the Civil Judge (Senior Division) Sealdah and whereby the application of the plaintiff/opposite party no. 1 under Order 39 Rule 7 C.P.C. was allowed and the prayer of the defendant no. 1 to 4 for expeditious hearing of the plaintiff's injunction application was rejected.

From the materials on record it is seen the opposite party no. 1 / plaintiff along with her co sharers defendant nos. 6 to 8/the present O.P. Nos. 3 to 5 have entered into a development agreement with present petitioners / the defendant no. 1 to 4 on 29.12.2002 for

development/for construction of multi storied building on the disputed property. They have also executed a power of attorney in favour of present petitioners for carrying out the construction work on disputed property on 29.12.2012 .

That as per agreement defendant no. 1 and 4 started construction of a multi storied building on the disputed property by spending more than sixty lakhs.

The present petitioners executed a gift deed in favour of K.M.C. in respect of a strip of land measuring 09 chittack 15 sqft.

Then plaintiff alone unilaterally revoked the general power of attorney executed by she and her other co sharers on 29.07.2016 and duly informed the petitioners on 29.08.2016. On such revocation of general power of attorney by the plaintiff alone, the petitioners filed Title Suit No. 51 of 2017. Then MOU was executed between the plaintiff and defendants no. 1 to 4 in respect of share of the plaintiff in the developed property on 4.12.2019. The plaintiff accepted a sum of rupees five lakh sixty one thousand. Then the developers entered into agreement with a tenant on 20.02.2020 and in such agreement even the plaintiff signed along with her other co sharers.

After such settlement the plaintiff filed Title Suit No. 65 of 2020 and filed an application for injunction and which was rejected by the learned Trial

Court on 24.08.2020. Against the rejection of her injunction application, she preferred Misc. Appeal No. 25 of 2020 on 05.10.2020. In such Misc. Appeal she filed an application for injunction an order of injunction was passed ex parte and later when the appeal was finally disposed of an order of status quo was passed on 15.02.2021. Being aggrieved by such order of status quo the present petitioner filed C.O. No. 476 of 2021. The Hon'ble Co-ordinate Bench of this High Court allowed such C.O. on 15.03.2021 with a direction to the learned Trial Court to dispose of the temporary injunction within stipulated period of two weeks.

The petitioner has brought to the notice of the learned Trial Court about the order passed in C.O. No. 476 of 2021 on 15.03.2021 on several occasions, but the learned Court below did not pay any heed and while passing the impugned order postponed the hearing of the injunction application filed by the plaintiff/ present opposite party and allowed the application of the opposite party no.1 filed under Order 39 Rule 7 C.P.C..

Perused the impugned order and the application filed by the petitioners for early disposal of injunction application. The present petitioners in their application for early hearing of injunction application filed before the learned Court below have specifically mentioned in para 3 about the direction given by the Hon'ble Co-ordinate Bench of this High Court in C.O.

No. 476 of 2021 and where the Court below was directed to dispose of the injunction application within two weeks. Unfortunately, the impugned order is totally silent about the direction given in the C.O. No. 476 of 2021 by the Hon'ble Co-ordinate Bench of this High Court. Therefore, it appears the learned court below has intentionally ignored the direction passed by the Hon'ble Co-ordinate Bench of this High Court in C.O. No. 476 of 2021 and went ahead with the hearing the application under order 39 rule 7 of CPC keeping the injunction petition pending. Such attitude and conduct of the learned court below is highly contemptuous and deprecated.

It is admitted facts that it is the plaintiff/ present opposite no.1 has filed injunction application. That an order of status quo passed by the Appellate Court is still in existence. The further construction was stopped by KMC as there was unauthorized construction on the ground floor to the extent of 44.301 sq.mtrs. That KMC has already regularized the unauthorised construction raised by deviating the original plan on payment of fine/fees. The construction is almost complete. Keeping in view such facts indeed this court finds there is need of immediate disposal of the injunction petition.

Since it is admitted fact that construction is almost over, then it is not known what made the learned court

below to hold local inspection of the disputed construction as there is no Misc. Case under Order 39 Rule 2A CPC before it and for determination of violation of injunction order and need to assess the extent of violation by the Developers by holding inspection of the disputed structure.

The order impugned is hereby set aside with a direction to the learned court below to dispose of the injunction petition filed by the plaintiff preferably within a period of fifteen days from the date of communication of this order by the present petitioners and see this time the direction is duly complied by it without any delay and without granting adjournments to either of the parties on whatsoever ground. On the date fixed, if the regular court remains absent, then officer/court in charge shall hear and dispose of the injunction petition on merit and as per law without being influenced by the observation made in this order.

Accordingly **C.O. 2153 of 2021 is disposed of.**

Connected applications are disposed of.

Interim order, if any, stands discharged.

There will be no order as to costs.

All parties are directed to act on a server copy of this order duly downloaded from the official website of this Court.

Urgent Photostat certified copies of this order, if applied for, be given to the parties upon compliance of all requisite formalities.

(**Kesang Doma Bhutia, J.**)