

06 **29.11.
2022**
Ct. No. 37

Ab

IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
(Commercial Division).

FMAT 400 of 2022
IA No. CAN 1 of 2022
IA No. CAN 2 of 2022

HR Commercial Private Limited
Vs.
Haldia Petrochemicals Limited and another.

Mr. Mainak Bose,
Mr. Dwaipayan Basu Mallick,
Mr. Rahul Kumar Singh.
... for the appellant.

Mr. Rupak Ghosh,
Mr. Tridib Bose,
Mr. Debjyoti Saha.
... for the respondents.

By consent of the parties, both the appeal and the connected applications are taken up together.

The instant appeal arises from an order dated 19th September 2022 passed by the learned Judge, Commercial Court at Rajarhat in TS 16 of 2022 (CC) by which an application under Order XXXIX Rule 4 of the Code of Civil Procedure stood allowed and an ad interim order dated 17th August 2022 was vacated.

Learned Advocate appearing for the plaintiff/appellant is very much vocal in his submission that on the date when the said application under Order XXXIX Rule 4 of the Code was filed and listed, the Court without affording an opportunity to contest the said application proceeded to dispose of the same. It is further submitted that the point on which the said order was vacated treating the same as suppression and/or goods being unascertained was taken into consideration at the time of passing the ad interim order of injunction

and, therefore, the Court should not vacate the interim order unless the case is within the four corners of the conditions mentioned in Order XXXIX Rule 4 of the Code are made out. It is also submitted that the Court should not vacate the interim order without affording an opportunity to meet the allegations made in the said application under Order XXXIX Rule 4 of the Code and, therefore, the impugned order suffers from violation of the principle of natural justice.

Learned Advocate appearing for the respondents submits that the goods sold are unascertained and the specific performance cannot be secured. Secondly, there has been a suppression of the material fact, as the several clauses could not be placed before the learned Judge. It is further submitted that the plaintiff/appellant participated in the subsequent tender floated for sale of the scrap, which is conspicuously absent in the plaint as well as in the application for temporary injunction.

Our attention is drawn to the order dated 17th August 2022 granting an ad interim order of injunction and we find that there is a reflection of fact that the plaintiff/appellant participated in the subsequent tender.

Learned Advocate appearing for the respondents at this juncture submits that without venturing to decide the points so canvassed, it would be proper that the application for temporary injunction may be directed to be disposed of within a time frame. It is further submitted on instruction that the respondents are interested in getting the matter resolved and/or decided at an earliest and the prolongation would cause further inconvenience and may act detrimental to their interest.

In view of the above, without going into the nuances of the law pertaining to Order XXXIX Rule 4 of the Code and the fact that the same was disposed of without an opportunity to the plaintiff/appellant to contest the

same, we feel that the justice would be sub-served if the injunction application itself is decided at an earliest.

Learned Advocate appearing for the respondents submits that the application under Order XXXIX Rule 4 of the Code filed by them contained full particulars of fact and, therefore, may be treated as affidavit-in-opposition to the application for temporary injunction in order to save the time and secure the speedy disposal of the application for temporary injunction. However, he also submits that certain events have taken place in course of the proceeding, which are material and vital for the purpose of deciding the cause and, therefore, they may be permitted to bring those facts on record.

In view of such stand, let the application under Order XXXIX Rule 4 of the Code be treated as affidavit-in-opposition to the application for temporary injunction.

Leave is granted to the contesting respondents to file supplementary affidavit bringing out the events, which are relevant for the purpose of the disputes involved in the suit, within seven days from date.

Since the copy of the application under Order XXXIX Rule 4 of the Code has already been served upon the plaintiff/appellant, the copy of the supplementary affidavit shall be served upon it within the time as indicated above and upon receiving the same, the affidavit-in-reply both to the application under Order XXXIX Rule 4 of the Code and the supplementary affidavit shall be filed within seven days therefrom.

Upon expiration of period for exchange of affidavits, the trial court shall dispose of the application for temporary injunction on or before the closure of the Court for the Christmas Vacation, if necessary the Court will fix the matter on day to day basis in order to secure the time limit indicated herein above, which is peremptory and mandatory.

Since we have decided the appeal on the basis of

the submissions so advanced to dispose of the injunction application and, therefore, the observations made in the impugned order shall not stand in the way of disposing of the said application.

Since the plaintiff/appellant was protected by an interim order, which was being extended from time to time, we, therefore, re-impose the ad interim order of injunction passed on 17th August 2022 to operate until the disposal of the injunction application.

For abandon precaution, we once again make it clear that neither the observations made in the impugned order nor herein before shall be construed to have any persuasive effect on the learned Judge in the trial court in deciding the application for temporary injunction, which shall be decided independently and by recording proper reasons in accordance with law.

With these observations, the appeal and the connected applications are disposed of.

There shall, however, be no order as to costs.

(Harish Tandon, J.)

(Prasenjit Biswas, J.)

