

28.09.2022
Item No.18
Ct. No.7
CHC
(disposed of)

C.O.3074 of 2022

**Bhargab Sales Private Limited
Vs.
Dignity Sales Private Limited & ors.**

Mr. Saptangshu Basu, Sr. Advocate
Mr. Probal Kumar Mukherjee, Sr. Advocate
Mr. Sukanta Chakraborty,
Mr. Anindya Halder,
Mr. Zuber Ahmed

...for the petitioner

Mr. Aniruddha Chatterjee,
Ms. Rajshree Kajaria,
Mr. Satadeep Bhattacharya,
Mr. Uttam Sharma,
Mr. Abir Lal Chakravorti

...for the opposite party no.1

Mr. Surajit Nath Mitra, Sr. Advocate

...for the opposite party no.2

Affidavit-of-service furnished by the petitioner be
taken on record.

Mr. Basu, learned Senior Advocate being assisted
by Mr. Probal Kumar Mukherjee, learned Senior
Advocate representing the petitioner/plaintiff, while
assailing orders, dated 14th September, 2022, and 21st
September, 2022, passed by learned District Judge,
Alipore, South 24 Parganas, in Miscellaneous Appeal
No.302 of 2022, submits that under an erroneous
approach the court below in appeal has granted stay
against the order of ad interim injunction passed by
learned trial court in Title Suit No.1197 of 2022, which
is devoid of the sanction of law.

Mr. Basu further contends that such stay order was granted by the court below in appeal even ignoring the existence of a Caveat already lodged, and thus, without giving any opportunity of hearing to the Caveator.

Having gathered knowledge of the stay order, Mr. Basu submits that a vacating application has already been filed putting much emphasis upon the urgency of the circumstances, for giving an urgent hearing in the case, but the same has been posted for hearing on 14th November, 2022, giving long date for the purpose.

While addressing the issue involved in this case, Mr. Basu submits that the petitioner is in possession of the subject property under reference.

Attention of this Court is drawn to the order, dated 06.09.2022, passed in Title Suit No1197 of 2022 by learned Civil Judge (Senior Division), 4th Court, Alipore, South 24 Parganas, granting ad interim injunction thereby restraining defendants from disturbing the peaceful possession and enjoyment of the plaintiff/petitioner in respect of the suit property, and not to give effect or act upon the development agreement dated 17th June, 2021, accepted by the defendant no.1, till certain date stipulated therein.

Upon drawing attention of this Court to such order of ad interim injunction granted by the trial court, Mr. Basu contends that there has been elaborate

discussion by the trial court in support of the urgency of the circumstances requiring immediate grant of an interim injunction, which the court below in appeal disturbed the same granting stay, without truly adverting to the facts involved in the instant case.

Per contra, Mr. Mitra, learned Senior Advocate appearing for the opposite party no.2 supporting the order of the court below in appeal, submits that there has been independent reasons subscribed, supportive of grant of stay, which being a product of discretion, exercised by the court below in appeal should not be interfered with.

Mr. Mitra representing the opposite party no.2, however, claims to be in possession of the subject property under reference, describing the opposite party no.2 to be the owner of the subject property.

Mr. Chatterjee appearing for the opposite party no.1 supporting the submission of Mr. Mitra submits that when the court below in appeal upon due exercise of its authority granted stay, the stay should not be even modified granting *status quo* for the purpose.

Reliance is placed by Mr. Chatterjee on a decision reported in **(2006) 3 Supreme Court Cases 312** in the case of ***Kishore Kumar Khaitan And Another versus Prveen Kumar Singh*** to contend that without returning a clear findings as to the possession of the

subject property under reference, the order of *status quo*, if granted would not be a meaningful one.

Having considered the submission of both sides, it appears that parties to this case, have claimed their respective possession over subject property under reference, which is as good as claim and counter claim of possession over a particular piece of land. Existence of a development agreement appears to be a disputed question of facts. When it is contended by the petitioner that without taking notice of the Caveat, there has been stay granted against the ad interim order of injunction granted by the trial court, and when undenyingly a vacating application has already been filed by the petitioner against stay order being granted in the court below in appeal, any interference by this Court at this stage is not justified.

The revisional application be disposed of directing the court below to hear out the vacating application expeditiously as possible, preferably within first week of November, 2022, if necessary upon preponing the date, upon due notice to the opposite parties, and address the issue to be raised by the parties to this case, and dispose of the same in accordance with law.

When both the parties involved in this case have raised their claim and counter claim with respect to the possession of the subject property under reference, it is thus ordered that in the meantime, preservation of

the suit property/subject property be maintained with respect to the nature and character of the same giving identity to the subject property, without causing any change or any material alteration in the suit property, till the hearing of vacating application, as per observation made hereinabove.

The impugned order is thus modified to the extent upon lifting the stay, as granted by the court below in appeal, by the order impugned.

This order is thus modified to the extent mentioned hereinabove. This order is passed without prejudice to the rights and contentions of the parties.

All points are kept open for appropriate address by the court below in appeal.

Parties are directed to make communication of this order to the learned court below.

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.)