

13.10.2022
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AN/Ct. No.32
Vacation Bench

CO 3251 of 2022

**Indiabulls Commercial Credit Limited & anr.
versus
Ravindra Biyani & ors.**

Mr. Surajit Nath Mitra, Sr. Adv.
Mr. Debjit Mukherjee
Mr. Deva Nand Misra
Mr. Prashant Singh

... for the petitioners

Mr. Saptangshu Basu, Sr. Adv.
Mr. Anubhav Sinha
Ms. Joey Chatterjee
Mr. Soumyadeb Chatterjee
Mr. Abhishek Roy

... for the opposite parties

Though this application under Article 227 of the Constitution of India is directed against an order extending the ad interim order of injunction, which is an appellable one, but in view of the fact that the appellate remedy is not available at present on account of Puja Vacation, this application is being entertained.

The defendant nos. 2 & 3 have filed this application under section 227 of the Constitution of India challenging an order dated 23.09.2022 passed by the learned Civil Judge, Senior Division, 10th Court, Alipore, South 24 Parganas in Title Suit No. 1170 of 2022 .

Mr. Mitra, learned senior counsel appearing for the petitioner submits that the suit is not maintainable as

there is an arbitration clause and the forum selection clause in the loan agreement as well as in the pledge agreement. He further submits that an application under Section 8 of the Arbitration & Conciliation Act, 1996 has been taken out but no date for hearing of such petition has been fixed by the learned trial court.

It is not in dispute that a Misc. Appeal being 286 of 2022 challenging the ex parte ad interim order of injunction dated 25.08.2022 is pending before the learned Additional District Judge, 5th Court, Alipore, South 24 Parganas.

Learned counsel appearing for the parties uniformly submit that hearing of the stay application in connection with the Misc. Appeal has been concluded but the appellate court is yet to deliver its order on such petition.

Mr. Mitra submits that the learned trial court extended the ad interim order of injunction mechanically without considering the documents filed by the petitioners herein in connection with objection against the prayer for extension of interim order. He further submits that the shares which the defendants are seeking to deal with were not pledged by the plaintiff/opposite party no. 2 herein and as such the opposite parties/plaintiffs shall not be prejudiced in any manner if the interim order is modified by this Court.

Mr. Basu, learned senior counsel representing opposite party nos. 2 and 3 submits that the shares in

question, which the petitioners are seeking to deal with were pledged in connection with the loan transaction and as such the defendants/petitioners cannot be allowed to deal with those shares at this stage. He further submits that the points raised by Mr. Mitra before this Court are the subject matter of the Misc. Appeal which is pending before the learned Additional District Judge, 5th Court, Alipore, South 24 Parganas.

After going through the impugned order, this Court is of the prima facie view, that the interim order of injunction was extended mechanically without supplying any reasons therefor. There is also no reflection, in the impugned order, of the consideration by the learned trial court of the documents relied upon by the defendant nos. 2 and 3/petitioners herein at the time of hearing of the petition for extension of ad interim order of injunction. However, since the interim order was passed initially on 25.08.2022 and a Misc. Appeal against such order is pending, this Court refrains from making any observations on the merits of the submissions of the respective counsels on the issue as to whether the shares in question forms part of the loan agreement or not and also whether the defendants can be allowed to deal with the same at this stage.

Since the application under Section 8 of the Arbitration & Conciliation Act, 1996 is pending, liberty is given to the plaintiffs to file their written objection to such

application on or before 28.10.2022. The learned trial Judge is requested to hear out and dispose of the application under Section 8 of the 1996 Act by November 30, 2022 after giving an opportunity of hearing to the respective parties.

The learned trial court shall not extend the ad interim order of injunction mechanically but shall consider the question of extension of ad interim order only after giving an opportunity to the respective parties to produce documents in support of their respective contentions and after affording an opportunity of hearing to the parties and by passing a reasoned order after dealing with the contentions of the respective parties.

It is, however, made clear that in view of the order passed by this Court the prayer for modification of the interim order made by Mr. Mitra is not considered at this stage. All points are left open to be decided by the learned Courts below.

With the above directions and observations, the instant civil revisional application is **disposed of** without, however, any order as to costs.

Urgent certified photostat copy of this order, if applied for, shall be given to the parties as expeditiously as possible on compliance of all necessary formalities.

(Hiranmay Bhattacharyya, J.)