

16.03.2022
(S/L-21)
Ct.-18
(Susanta)

C.O. 4286 of 2016
With
I.A. No. CAN 1 of 2017 (Old CAN 2111 of 2017)

Sri Kingshuk Mukherjee
-Vs-
Smt. Anjali Dutta & Ors.

Mr. Jayanta Samnta,
Mr. Sunil Kumar Brahmachari,
.... For the Petitioner.

Mr. Jayanta Samnta, learned advocate for the petitioner, files affidavits-of-service which are taken on record.

None appears on behalf of the opposite parties in spite of service.

The revisional application under Article 227 of the Constitution of India is directed against Order no. 2 dated September 15, 2016 passed by the 1st Court of learned Additional District Judge, Sealdah in Title Appeal No. 39 of 2016.

The petitioner was a tenant in respect of a portion of the suit premises. The opposite party no. 4 was engaged by the owners of the suit premises, the opposite party nos. 1, 2 & 3 herein to develop the said premises.

A tripartite agreement was entered into by and between the petitioner, the said owner and the said developer.

In terms of the said agreement the petitioner is entitled to 150 Sq.ft. covered garage at the

ground floor of the new building to be constructed at the suit premises.

The petitioner has filed the connected suit alleging that the construction of a new building in the suit premises has already been completed but he has not been provided with the said space in terms of the said tripartite agreement.

In the said suit being Title Suit No. 90 of 2014 pending before the 2nd Court of learned Civil Judge (Junior Division), Sealdah the petitioner has prayed for a decree of declaration, permanent injunction and enforcement of the said agreement.

The learned Trial Judge has dismissed the said suit; the petitioner aggrieved thereby has preferred the connected Title Appeal.

In the said appeal, the petitioner filed an application under Order XXXIX Rules 1 and 2 of the Code of Civil Procedure praying for an order of injunction restraining the opposite parties from alienating and/or encumbering the said 150 Sq.ft. of garage in the said newly constructed building during the pendency of the said appeal.

The Appellate Court below by the order impugned has refused to pass an ad interim order of injunction on the said application on the ground that the application does not disclose the date of completion of the construction of the said new building.

The ground for refusal of the prayer of the petitioner for an ad interim order of injunction is not coming within the purview of the requirements for grant or refusal of a prayer for an ad interim order of injunction.

Mr. Samanta, learned advocate for the petitioner submits that during the pendency of the suit the interest of his client was protected by an order of injunction.

In view of the aforesaid, the petitioner is able to make out a prima facie case for grant of an ad interim order of injunction, other requirements for grant of such an order are also fulfilled as such the opposite parties are restrained by an ad interim order of injunction from alienating and/or encumbering the property till the disposal of the application for injunction.

The Appeal Court below is requested to dispose of the said application for injunction as expeditiously as possible in accordance with law, preferably within a period of three available effective working month of his Court from the date of communication of this order.

C.O. 4286 of 2016 is disposed of with the above terms without any order as to costs.

**Re: I.A. No. CAN 1 of 2017
(Old CAN 2111 of 2017)**

The application being I.A. No. CAN 1 of 2017 (Old CAN 2111 of 2017) although is appearing in

the list but is not in the record.

Mr. Samanta supplied photocopy of the said application which is taken on record and is treated as part of it.

This is an application for extension of interim order.

In view of the disposal of the revisional application, no further order need be passed in this application.

The application I.A. No. CAN 1 of 2017 (Old CAN 2111 of 2017) is, thus, disposed of without any order as to costs.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties subject to compliance with all requisite formalities.

(Biswajit Basu, J.)