

15.07.2022
Court No.1
Item No.13
pk/AP

**HIGH COURT AT CALCUTTA
CIRCUIT BENCH AT JALPAIGURI**

**FMAT 9 of 2022
With
CAN 1 of 2022**

**Naila Rahman and Ors.
Vs.
Nabin Gupta**

Mr. Suddhasatva Banerjee
Mr. Sharequl Haque

... For the appellants.

The appellant is aggrieved by the order dated 21st April 2022 passed in T.S. No.15 of 2020. The suit is for specific performance of unregistered agreement for sale. The appellant is a defendant in the suit.

The plaintiff in aid of the main payer for specific performance obtained an ad interim order of injunction against the defendant from alienating the property in question.

The impugned order was passed on an application of the defendant appellant under Order 39 Rule 1 and 2 praying for injunction restraining the respondent from making any construction on the property in question.

The application was heard on context and the Court had ordered the plaintiff and the defendant Nos.1 to 7 to maintain status quo with

regard to nature, character, possession and alienation of the suit property as on date of disposal of the suit.

The only ground on which the order is challenged is that the Court had ordered of injunction on both on the plaintiff as well as the defendant on an application made by the defendant.

It appears that the plaintiff's application for injunction is since pending in which the defendant appellant has filed written objection. The impugned order otherwise calls for no interference as it is only a protective interim measure with regard to a property that is the subject matter of the suit for specific performance.

However, since the main application filed under Order 39 Rule 1 and 2 filed by the plaintiff is pending, the impugned order shall be subject to the result of the first application filed by the plaintiff under Order 39 Rule 1 and 2 which is pending final disposal

The observations of the Court in the impugned order of the Civil Judge (Senior Division), Darjeeling in the impugned order dated 21st April 2022 shall not influence the disposal of the first application of the plaintiff as aforesaid.

The aforesaid order is passed without notice on the respondents since no caveat is there.

However, even otherwise the plaintiff respondent is unlikely to be prejudiced by the aforesaid order. The appellant defendant and the Registry shall serve a copy of this order on the plaintiff immediately and notify the Court below.

Since the respondent/plaintiff has not been called upon to participate in this appeal, none of the allegations in the pleadings shall be deemed to be admitted by them.

It is ordered that the first application under Order 39 Rule 1 and 2 filed by the plaintiff be disposed of within a period of two months from the date of communication of a copy of this order.

For the reasons stated hereinabove, the appeal is disposed of.

In view of the above, connected application being CAN 1 of 2022 is disposed of.

There shall be no order as to costs.

All parties shall act on the server copy of this order duly downloaded from the official website of this Court.

(Rajasekhar Mantha, J.)

(Ananda Kumar Mukherjee, J.)