

**IN THE HIGH COURT AT CALCUTTA
CIRCUIT BENCH AT JALPAIGURI
CIVIL APPELLATE JURISDICTION**

Present:

**The Hon'ble Justice Subrata Talukdar
and
The Hon'ble Justice Krishna Rao**

FMAT 13 of 2022

With

IA No. CAN 1 of 2021

With

IA No. CAN 2 of 2022

PRM Real Estate Pvt. Ltd.

Versus

Sri Amit Kedia & Ors.

Mr. Saptansu Basu, Sr. Adv
Mr. Milindo Paul
Mr. Nabankur Paul
Ms. Bedashruti Bose
Mr. Nikhil Mohpal

.....For the Appellant.

Mr. Sudipto Kumar Mazumder, Ld. A.S.G.

.....For the Respondents/Defendants.

Mr. Amlesh Ray
Mr. Deborshi Dhar
Mr. Somraj Paul

.....For the Respondents/Plaintiffs.

Heard on : 09.09.2022 & 14.09.2022

Judgment on : 16.09.2022

Krishna Rao, J.:-

CAN 1 of 2022

The appellant has preferred the instant application praying for leave to appeal against the Order no. 7 dated 16.08.2022 passed by the Learned Civil Judge, Senior Division, Jalpaiguri in Title Suit No. 65 of 2022 (Amit Kedia & Ors. -vs- Pradip Kumar Agarwal & Ors.). Mr. Saptansu Basu, Learned Senior Advocate representing the appellant submits that due to the order of injunction dt. 16.08.2022, the legal right of the appellant has been adversely affected as the appellant is a necessary party to the suit but the appellant has not been made as defendant in Title Suit No. 65 of 2022 and in the absence of the appellant, the respondent/plaintiff has obtained the order of injunction. The appellant submits that the respondent nos. 8 to 10 and one Seema Agarwal, who are in occupation of the suit property, desires to construct a commercial complex/building on the suit property and accordingly they have approached the appellant, who is renowned real estate company having experience in design and construction for construction of commercial building and accordingly a joint venture development agreement was entered between the respondent nos. 8 to 10 and Seema Agarwal on 01.09.2021 which was duly registered before the Additional District Sub-Registrar Bhaktinagar, Jalpaiguri. The appellant further submits that after the venture development agreement, a building plan was duly approved from the Pradhan of the concerned area and the District Engineer of Jalpaiguri Zila Parishad on 11.01.2022 for construction of G+4 storied commercial building and accordingly the appellant had

proceeded with the construction work. It is further submitted that already 80 % of the construction work is being completed but all of a sudden the respondent/plaintiff has obtained an order of injunction from the Court of Learned Court of Civil Judge, Senior Division, Jalpaiguri without impleading the appellant as defendant due to which, the appellant is suffering very badly. The Learned Counsel for the appellant submits that the appellant is the necessary party as the appellant is constructing the commercial building and due to the order passed by the Learned Court of Civil Judge, Senior Division, Jalpaiguri, the construction work of the appellant has been stopped.

Mr. Amallesh Ray, Learned Counsel representing the respondents/plaintiffs submits that the application filed by the appellant is not maintainable as the appellant is not a person aggrieved. Mr. Ray submits that the respondents/plaintiffs have filed the suit against the respondent nos. 7 to 10 who are in illegal occupation of the suit property and making construction over the suit property. Mr. Ray further submits that the respondent nos. 7 to 10 have entered appearance in the suit and have filed their written objection to the injunction application but the respondent nos. 7 to 10 have not disclosed with regard to the fact of execution of venture development agreement with the appellant and in the written objection, the respondent nos. 7 to 10 have stated that the appellant is making construction.

Mr. Ray has handed over the copy of the application filed by the appellant under Order 1, Rule 10 (2) of the Code of Civil Procedure read with

Section 151 of the Code of Civil Procedure for passing appropriate order for adding the appellant as defendant in Title Suit 65 of 2022. The Learned Counsel for the respondents/plaintiffs further submits that as the appellant has preferred an application under Order 1, Rule 10 (2) of the Code of Civil Procedure and as such the instant application is not maintainable.

The Learned Counsel for the respective parties. Admittedly, the respondents/plaintiffs have obtained an order of injunction wherein the construction over the suit property has been stopped. The appellant is claiming that in terms of the venture development agreement entered between the respondent nos. 8 to 10 and the appellant, the appellant is making construction over the property. The respondent nos. 8 to 10 have entered into the suit and have filed the written objection but have not disclosed with regard to the venture development agreement entered between the parties. The appellant has filed the instant application seeking leave to prefer appeal against the impugned order on the basis of the venture development agreement and simultaneously the appellant had also filed an application before the Learned Court of Civil Judge, Senior Division on 09.09.2022 for addition of party.

Considering the above facts, this Court is of the view that as the appellant had already preferred an application under Order 1, Rule 10 (2) of the Code of Civil Procedure read with Section 151 of the said Code for addition of party as defendant and thus this Court is of the view, it would be appropriate instead of allowing the instant application being CAN 1 of 2022 filed by the appellant, the appellant can be directed to pursue the

application filed under Order 1, Rule 10 (2) of the Code of Civil Procedure before the Learned Court of Civil Judge, Senior Division, Jalpaiguri.

Accordingly, **CAN 1 of 2022** stands **disposed of**.

It is made clear that this Court has not gone into the merits of the appeal and the stay application preferred by the appellant and if any application is filed by the appellant for variation/modification/vacation of the interim order, the Learned Court of Civil Judge, Senior Division, Jalpaiguri shall decide the same on its own merits without being influenced by any observation made hereinabove.

CAN 2 of 2022 and **FMAT 13 of 2022** also stand accordingly **disposed of**.

All concerned parties shall act in terms of the copy of the Judgment downloaded from the official website of this Court.

Urgent photostat certified copy of this Judgment, if applied for, be supplied to the parties on compliance of necessary formalities.

I agree.

(Subrata Talukdar, J.)

(Krishna Rao, J.)