

ORDER SHEET
APOT/2/2022
WITH
CS/165/2021
IA NO : GA/1/2022
IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
ORIGINAL SIDE

SYNDICATE REALITYINFRA PVT LTD.
Vs
MONO ORION FOODS INDIA PVT LTD.

BEFORE:

The Hon'ble JUSTICE I. P. MUKERJI
The Hon'ble JUSTICE ANIRUDDHA ROY
Date : 20TH JANUARY, 2022.

Appearance:
Mr. Abhrajit Mitra, Sr. Adv.
Mr. D. Nath Sharma, Adv.
Mr. N. Balodia, Adv.
Mr. B. Shankar Purohit, Adv.
Mr. P. Choudhury, Adv.
...For the Appellant

Mr. Rudraman Bhattacharyya, Adv.
Ms. S. Ghosh, Adv.
Mr. A. P. Moulick, Adv.
...For the respondent

The Court : We do not wish to keep this appeal pending.
Dispensing with all formalities, we have heard it out and are disposing of
it by this judgement and order.

The appellant/defendant before us is the owner of the subject
property. The respondent/plaintiff is the developer. On 17th August,
2015, they had entered into a development agreement for development of
this property.

In or about August, 2021, the plaint in the suit was verified. The
respondent/plaintiff prayed for the following reliefs in addition to leave
under Order 2 Rule 2 of the Code of Civil Procedure, 1908 :

“(a) A decree for specific performance of the registered
development agreement dated August 17, 2015 as pleaded in
paragraph 24 above by :

- (i) Executing a power of attorney in favour of the
nominee of the Plaintiff namely Meena Agarwala and
cause the same to be registered;

(ii) The defendant and/or its directors be directed to render necessary assistance in having such power of attorney to be executed and also to be registered;

(iii) In the event, the defendant, its men, agents, servants, assigns refuse to execute a power of attorney and/or to register the same, an officer of the Court be appointed to execute a power of attorney in terms of clauses 4.1, 6.6, 7.1 and 10.2 of the said Development Agreement on behalf of the Defendant and present the same for registration and have the same registered for and on behalf of the defendant;

(b) A decree for mandatory injunction directing the Defendant to execute a fresh General Power to Attorney in favour of the nominee of the Plaintiff strictly in terms of Clause 4.1 and 7.1 of the Development Agreement dated August 17, 2015, as pleaded in paragraph 25 above;

(c) A decree for Perpetual Injunction restraining the Defendant, its men, agents, servants and assigns from creating any third party rights in respect of the subject premises or interfering with the right of the Plaintiff or to enter into any agreement with any third party on account of the balance work at the subject premises as pleaded in paragraph 26 above;

(d) A decree for Perpetual injunction restraining the Defendant, its men, agents, assigns and servants from dealing with, disposing of, and/or encumbering the Plaintiff's share of allocation as indicated in Annexure "H" hereof;

(e) A decree for Perpetual injunction restraining the Defendant, its men, agents, assigns and servants from trying to interfere, dispossess the Plaintiff from the premises no. 1, Upper Wood Street, Kolkata-700017;

(f) Injunction;

(g) Receiver;

(h) Costs;

(i) Further and/or other relief or reliefs as this Hon'ble Court may deem fit and just."

In aid of the suit, an interlocutory application was moved. At the motion stage, after extensive hearing for around 9 to 10 days on 23rd December, 2021, the learned single judge was pleased to opine that the respondent/plaintiff had been able to make out a prima facie case. Considering "the balance of convenience", the following directions were made :

- (a) "The respondent (appellant) is directed to not create any third party rights in the suit premises till further orders.
- (b) The prayer for the grant of mandatory injunction for execution of Power of Attorney in favour of the nominee of the petitioner/plaintiff to execute the balance work is allowed and the respondent is directed to execute the same within four weeks from date."

It is very important to note that in the ordering part, the learned judge has said that the application was being 'allowed'. However, later on, directions for filing of affidavits were made. Most probably, this expression "allowed" was inadvertent and the order was meant to be interim only.

Going by the reliefs in the plaint, it appears that the respondent/plaintiff was seeking specific performance of the development agreement through the mode of execution of power of attorney in its favour by the appellant. Nothing else was sought to enable performance of this agreement.

If that be so, then at the ad interim stage, a direction on the appellant/defendant to execute this power of attorney in favour of the respondent/plaintiff or its nominee tantamounted to granting the final relief in the suit.

But as far as the order made directing the appellant/defendant not to create any third party rights in the suit premises till further orders, it

is prima facie sustainable at this stage, subject to the appellant/defendant's ability of displacing the prima facie case made out by the respondent/plaintiff before the learned single judge at the ad interim stage, on exchange of affidavits.

In those circumstances, we set aside that part of the impugned order directing the appellant to execute a power of attorney in favour of the respondent. The said other part of the order is sustained, subject to the observations made above.

The impugned judgement and order dated 23rd December, 2021 is modified to the above extent.

The learned single judge is requested to hear out the interim application on affidavits.

Time to file affidavits before the learned single judge is extended as follows :

Affidavit-in-opposition be filed by 3rd February, 2022.

Affidavit-in-reply be filed by 17th February, 2022.

The learned single judge will not be influenced by any finding in the impugned judgement and order. The learned single judge shall also treat any observation, if any, made by us on the merits of the case as prima facie.

The appeal (APOT No.2 of 2022) and the stay application (IA No.GA No.1 of 2022) are disposed of accordingly.

(I. P. MUKERJI, J.)

(ANIRUDDHA ROY, J.)