

OD-6

IN THE HIGH COURT AT CALCUTTA  
CIVIL APPELLATE JURISDICTION  
ORIGINAL SIDE

APOT/37/2022  
CSOS/1/2022  
I.A. NO. GA/1/2022  
NANDITA JALAN  
VERSUS  
MUKESH JALAN

BEFORE :

THE HON'BLE JUSTICE T.S. SIVAGNANAM

And

THE HON'BLE JUSTICE HIRANMAY BHATTACHARYYA

Date : 17<sup>th</sup> May, 2022.

Appearance:-

Mr. Rupak Ghosh, Adv.

Mr. Ashis Kumar Mukherjee, Adv.

Ms. Sulagna Mukherjee, Adv.

Mr. Saurabh Prasad, Adv.

...for Appellant

Mr. Sakya Sen, Adv.

Ms. Labanyashree Sinha, Adv.

... for Respondents

The Court : This intra-court appeal is directed against the order dated 10<sup>th</sup> February, 2020 passed by the learned Single Bench and the appellant was before us primarily on the ground that the prayer for interim orders was not granted by the learned Single Bench.

When we heard the appeal on 21<sup>st</sup> April, 2022 we passed the following order :-

“This appeal is directed against the order dated 10<sup>th</sup> February, 2022 in CSOS 1 of 2022. The order reads as follows :

*“The Court : Heard counsel appearing on behalf of the parties.*

*Mr. Sakya Sen, counsel appearing on behalf of the defendant submits that this originating suit is not maintainable and would like to place judgment to buttress his arguments.*

*Accordingly, let this matter come up on 2<sup>nd</sup> March, 2022.*

*Parties shall be at liberty to exchange affidavits in the meantime.”*

The learned advocate appearing for the appellant would submit that the appellant had prayed for appropriate interim protection pending decision of the main matter before the learned Single Bench and the same having not been granted, the appellant is before this court by way of this appeal. We find from the impugned order that the learned Single Bench has recorded preliminary objection raised by the learned advocate appearing for the respondent with regard to the maintainability of the originating summons and the learned advocate desired to place certain judgments to buttress his arguments. Recording the said submission, the learned Single Bench directed the matter to be listed on 2<sup>nd</sup> March, 2022. Thereafter, the matter had come up on 2<sup>nd</sup> March, 2022, the Court noting that the affidavit in opposition was filed belatedly extended time for filing affidavit in reply by two weeks and the matter was directed to be listed after four weeks. In terms of the liberty granted, affidavit in reply was filed by the appellant before us and when the matter was heard on 6<sup>th</sup> April, 2022, the learned Single Bench had directed the matter to appear under the heading ‘Originating Summons Suit’ on 27<sup>th</sup> April, 2022.

It is at this juncture, the appellant is before us. We are of the prima facie view that the learned Single Bench having not expressed any opinion on the relief, sought for by the petitioner, it may not be appropriate for us to take up this appeal. At this juncture, learned counsel for the respondent submits that the present

appeal itself is not maintainable. We do not wish to express any opinion on the contention raised by the learned advocate for either side and we shall await the decision of the learned Single Bench which has directed the matter to be listed on 27<sup>th</sup> April, 2022.

Let the matter appear on 12<sup>th</sup> May, 2022.”

The learned Counsel appearing for the appellant would submit that the observation contained in our order dated 21<sup>st</sup> April, 2022 has been taken note of and the learned Trial Court has recorded the submissions made on behalf of the respondent. In the light of the same, the learned Counsel submits that the appeal may be disposed of noting the said order.

In the light of the above, the appeal stands disposed of in view of the order passed by the learned Trial Judge after recording the submission made on behalf of the respondent.

The application being I.A. NO. GA/1/2022 stands disposed of.

(T.S. SIVAGNANAM, J.)

(HIRANMAY BHATTACHARYYA, J.)