

ORDER

IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
ORIGINAL SIDE

APOT/141/2022
WITH
CS/80/2022
IA NO.GA/1/2022

ATAM PRAKASH HARLALKA & ANR.
VERSUS
SANTOSH KEDIA & ORS.

APOT/145/2022
WITH
CS/80/2022
IA NO.GA/1/2022

BISHWANATH HARLALKA & ORS.
VERSUS
SANTOSH KEDIA & ORS.

BEFORE

The Hon'ble Justice HARISH TANDON

The Hon'ble Justice PRASENJIT BISWAS

Date: 8TH SEPTEMBER, 2022

Appearance

Mr. Debasish Ghosh, Advocate

Mr. Sanjay Mukherjee, Advocate

Mr. Suvrdev Chowdhury, Advocate

Mr. Souma. Bhattacharya, Advocate

....for the appellants/petitioners

Mr. Rupak Ghosh, Advocate

Mr. Sourav Roy, Advocate

Mr. V.V. V. Sastry, Advocate

..for the respondents

The Court : These two applications are taken up together as the appeal is filed by different categories of defendants challenging the self-

same order. After perusing the impugned order, we find that it would be futile exercise to keep the appeal pending. Therefore, we decide to proceed with disposal of the appeal itself.

These appeals arose from an order dated 7th July, 2022 passed in CS/80/2022 by which applications for injunction filed by the plaintiffs/respondents were disposed of on the basis of an undertaking of the respondents recorded in the order dated 19th May, 2022. At the time of moving the said applications for injunction on 17th May, 2022, the Trial Court granted an ad interim order of injunction restraining the appellants from dealing with, encumbering and/or transferring the said property in favour of any third party till 19th May, 2022. The said applications were listed on the returnable date and the submission was made on behalf of the appellants that they have no intention to sell, alienate, encumber or create any third party interest in respect of the suit premises. However, plea of maintainability of the applications was raised and was left open. The parties were directed to exchange affidavits. On the day the said applications for temporary injunction were listed for final disposal, submission was reiterated by the appellants that they have nothing to alter the status quo in respect of the suit premises. Since an undertaking was already there and the situation which was prevalent as on 7th July, 2022 have been accepted by the appellants, the Court proceeded to dispose of the applications on the basis of such undertaking.

There was no injunction order which was passed. However, the undertaking which was given before the Court was taken to be continued as the appellants agreed not to alter the position.

The learned Advocate for the appellants is very much vocal in his submission that there has been a long recording of events happened before the Single Bench. It is submitted that the appellants were not represented on the day and, therefore, there was no occasion to make any submission pertaining to altering the position as it stood on the said date.

The recording of the events in the judicial order is always treated to be sacrosanct, neither can be disputed by way of affidavit nor it is open to the parties to approach the Appellate Court on such ground. The only remedy which is available to such aggrieved person is to approach the said Court by making an application indicating the events either having not happened or wrongly recorded to have happened and it is the Judge, who passed the order, shall decide the same. (see *State of Maharashtra vs. Ramdas Shrinivas Nayak*, AIR 1982 SC 1249)

Since a point has been taken on the wrong recording of the events, we, therefore, do not find any ground to interfere with the said order as a Court of Appeal. The remedy has already been provided to the appellants and, therefore, it is open to the appellants to exhaust such remedy before the appropriate forum.

Both the appeals along with the applications are dismissed.

There is no order as to costs.

[HARISH TANDON, J.]

[PRASENJIT BISWAS, J.]

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