

23.08.2023
Court No. 19
Item No.12
CP

C.O. 2048 of 2023
Tarun Dokania & anr.

Vs.

Emami Realty Limited & ors.

Mr. Aniruddha Chatterjee
Mr. Pranay Mukherjee
Mr. Rishabh Ahmed Khan
Mr. Ratul Das

...for the petitioners.

Mr. Sarosij Dasgupta
Mr. Debnath Ghosh
Ms. Pubali Sinha Chowdhury
Mr. S. Dasgupta
Mr. Satwik Benwala

....for the opposite party nos. 1 & 2.

This revisional application has been filed challenging an order dated April 26, 2023, passed by the learned Additional District Judge, 7th Court at Barasat in Misc. Appeal No. 61 of 2021. The said Misc Appeal arose out of an order dated March 25, 2021, passed by the learned Civil Judge (Junior Division), Bidhannagore in Title Suit No. 112 of 2021.

By the order dated March 25, 2021, the learned Trial Judge restrained the defendants from transferring and/or creating any third party interest in respect of the suit property. The developer preferred an appeal. Misc. Appeal No. 61 of 2021 was registered. The learned lower appellate court, upon considering Clause No. 19 of the agreement for sub-

lease, came to the conclusion that existence of the arbitration clause, ought to have deterred the learned Trial Judge, from passing any ad interim order of injunction. The ad interim order passed by the learned Trial Judge was set aside and the learned Trial Judge was directed to decide the application for temporary injunction expeditiously.

Such order has been challenged by two of the plaintiffs on the ground that the order was misconceived. As the parties did not invoke Section 8 of the Arbitration and Conciliation Act 1996, it was not proper for the learned lower appellate court to set aside the order of ad interim injunction, only by taking note of the arbitration clause.

According to Mr. Chatterjee, learned advocate for the petitioners, as the defendants did not file any application under Section 8 of the Arbitration and Conciliation Act 1996, the learned lower appellate court ought not to have made observations on the bar created by such provision of law, thereby holding that the learned Trial Judge could not have entertained the prayer for ad interim injunction in the suit. According to the learned Advocate, such observations amounted to prejudging the maintainability of the suit when the defendants were not before the court with such question. In emergent

situations, injunction could not be refused even if there was an arbitration clause.

Mr. Ghosh, learned advocate appearing on behalf of the defendant no. 1, submits that the learned lower appellate court not only considered the existence of an arbitration clause, but also considered that the order impugned before the said court was without any reasons. The learned Trial Judge did not consider the prima facie case, balance of convenience and inconvenience and the irreparable loss and injury that the plaintiffs would suffer. A blanket order of ad interim injunction was passed. Learned Advocate further submitted that the order of injunction was passed in respect of the entire property, although the complaint of the plaintiffs were limited to certain toilets in the towers that they were residing in.

Having considered the rival contentions of the parties, this court finds that the learned trial court did not record any reasons while granting the ad interim injunction.

The observations of the learned lower appellate court with regard to Section 8 of the Arbitration and Conciliation Act 1996, will not be a decision either on the applicability of the said section or on the maintainability of the suit. The observations should be treated as passing reference.

The rights and liabilities of the parties arising from the arbitration clause in the sub-lease, are left open to be decided if raised in the suit. The parties can always raise such questions at the relevant stages in the suit.

The order impugned is required to be modified. Some interim protection is required to be given till the application for temporary injunction is decided.

One toilet each, in tower A4 and C3 of the premises known as Emami City at 2, Jessore Road, shall be kept vacant and not encumbered in any way by induction of either licensees or third parties, till the application for temporary injunction is disposed of.

The learned Trial Judge is directed to decide the application for injunction, within a period of three months from the next date fixed.

The revisional application is accordingly disposed of.

There shall be no order as to costs.

Parties are to act on the server copy of this order.

(Shampa Sarkar, J.)