

05.10.2023
Sl. No.5(DL)
srm

C.O. No. 3031 of 2023

Sukanta Mondal

Versus

Smt. Pritha Mondal

Mr. Arijit Bardhan,
Mr. Sounak Bhattacharya,
Mr. Kanakendu Chatterjee

...for the Petitioner.

Mr. Gourav Banerji

...for the Opposite Party.

The revisional application arises out of an order dated August 18, 2023 passed by the learned Additional District Judge, 5th Court at Alipore, South 24-Parganas. The learned lower appellate court, rejected the prayer for interim injunction and dismissed the appeal. The court upheld the order dated March 22, 2023 passed by the learned Civil Judge (Senior Division), 7th Court, Alipore, South 24-Parganas, in Title Suit No.391 of 2023.

The husband/petitioner filed a suit against his estranged wife, for declaration, permanent injunction and recovery of money along with interest valued at Rs.6,08,500/-. In paragraph 3 of the plaint, it has been mentioned that prior to the marriage, the parties decided to purchase a flat and accordingly a flat being No.B-3 on the 3rd Floor, East Side of the

G+3 storeyed building known as 'Saraswati Apartment', measuring about 920 sq.ft. was purchased in th name of the opposite party. The said apartment is situated at Holding No.F3-12/New, Daulatpur Road, under Ward No.31, Maheshtala Municipality. The house building loan from the bank was availed of by the defendant/opposite party and the petitioner had given Rs.4,87,000/- to the opposite party to enable her to purchase the flat. It has been further contended that the money towards payment of the EMI was also given to the wife and the wife used to pay the EMI.

During the pendency of the said suit, an application for injunction was filed with a prayer restraining the wife/opposite party from selling and/or encumbering the property in anyway. Contention was that an amount of Rs.6,08,500/- should be paid to the petitioner along with interest @ 18% per annum, which was in the nature of a loan given to the wife to purchase the property. Till such amount is recovered from the wife/opposite party, the flat should not be sold. Alternatively, the plaintiff/petitioner should be declared as the owner.

Reliance was also placed on several advertisements uploaded by the wife in the social media which indicated that she had an intention to sell the flat. A prayer for ad interim

protection was also made restraining the wife from selling the property. The learned Civil Judge (Senior Division), 7th Court at Alipore, raised a question whether there was any urgency which would warrant a relief of ad interim injunction in the facts of the case. According to the learned trial Judge, material evidence was required to decide the issue and without hearing the wife/opposite party, ad interim injunction could not be issued.

The petitioner challenged the said order in a misc. appeal being Miscellaneous Appeal No.104 of 2023. The learned lower appellate court considered the rival contentions of the parties in great detail. No document was available before the learned lower appellate court, which would indicate that the money which was sent to the bank account of the opposite party was on account of purchase of the said flat. The registered deed of conveyance indicated that the wife was the sole owner of the flat. The learned lower appellate court was also of the view that the claim of the petitioner was hit by the Prohibition of Benami Property Transactions Act, 1988. Under such circumstances, the misc. appeal was dismissed.

Mr. Bardhan, learned Advocate appearing on behalf of the husband/petitioner submits that initially an ad interim order was passed by the learned lower appellate court upon

being satisfied with the merits, but thereafter, by the order impugned, the misc. appeal was dismissed without any relief. According to Mr. Bardhan, the learned trial Judge had found triable issues which were to be decided on evidence. Thus, the petitioner was successful in proving a, *prima facie*, case. When, *prima facie*, case was in favour of the petitioner, the ad interim order ought to have been passed considering the balance of convenience and inconvenience. If the flat was sold, the petitioner would not have any opportunity either to recover the money or a part of the flat. The situation would become irreversible.

From the prayer in the plaint, it appears that an alternative prayer has been made for recovery of money along with interest, apart from the prayer for declaration of the plaintiff as a joint owner of the flat. In my, *prima facie*, view, such prayer can easily be granted if the plaintiff is successful in proving his case even if the flat is sold. Secondly, the flat is in the name of the opposite party. Even if any money was given to the opposite party, records do not reveal that the understanding was such that both the parties would be joint owners of the said flat.

In any event, the purchase was made prior to the marriage and the wife categorically has stated that she was a working lady.

Under such circumstances, there is no scope for granting any ad interim protection or injunction, as prayed for. The order impugned does not suffer from any perversity. However, as the application for temporary injunction is pending before the learned trial Judge, the said application shall be disposed of on its own merits, in accordance with law, within a period of two months from the reopening of the court after the Puja Vacation.

All observations made hereinabove and *prima facie* and tentative.

The revisional application is accordingly dismissed..

There shall be no order as to costs.

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

(Shampa Sarkar, J.)