

08.02.2023  
Item No.4  
Ct. No.7  
CHC  
(disposed of)

**C.O. 3640 of 2022**

**Rekha Ginodia & ors.**

**Vs.**

**Emery Foods Private Limited & ors.**

Mr. Tanmoy Mukherjee,  
Mr. Sourajit Das Gupta,  
Mr. Prasun Ghosh,  
Mr. Malay Kumar Seal

...for the petitioners

Mr. Anirban Ray,  
Mr. Rupak Ghosh,  
Mr. Nikunj Berlia,  
Mr. Varun Kothari,  
Mr. Mrigank Kejriwal

...for the opposite parties

Supplementary affidavit furnished by the  
petitioners be taken on record.

Subject-matter of challenge in this case is against  
the appellate decision passed in Misc. Appeal No.21 of  
2022, by learned Additional District Judge, 1<sup>st</sup> Court,  
Serampore, Hooghly, dismissing the appeal.

Admittedly, the Miscellaneous Appeal was  
preferred against an order of ad interim injunction  
being granted by the trial court, which was ultimately  
dismissed with a direction upon the court below to  
decide the application under Order 39 Rule 4 C.P.C.  
and Order 7 Rule 11(d) C.P.C. without being

influenced by the observation of appellate Court made in the body of judgement.

Mr. Tanmoy Mukherjee, learned advocate appearing for the petitioners/defendants submits that in the court below the petitioners have already filed application under Order 39 Rule 4 C.P.C. praying for modification and/or variation and/or recalling the order of the ad interim injunction already granted by the trial court. That application is still pending.

It is proposed by Mr. Mukherjee that there has been some observations made in the body of the judgement of this appeal, which may perhaps influence the decision of the court below, while taking independent decision to the disposal of injunction application under Order 39 Rule 1 and 2 C.P.C.

Per contra, Mr. Ray, learned advocate appearing for the opposite parties submits that when there has already been a direction passed by the appellate court requiring the court below to deal with the application under Order 39 Rule 4 C.P.C., and Order 7 Rule 4 C.P.C. without being influenced by the observation of the appellate court, made in the body of the judgement, the mere apprehension on the part of the petitioners regarding the chance of causing influence to the decision of the injunction application would be without any substance.

At this juncture, Mr. Mukherjee, submits that the application filed under Order 39 Rule 4 C.P.C. be directed to be treated as objection to the injunction application, as the petitioners would not file any separate objection to the injunction application.

Mr. Ray, learned advocate appearing for the opposite parties, however, replies that the opportunity may be granted to file reply to the objection filed under Order 39 Rule 4 C.P.C.

Prior to deciding the applications, mentioned in the operative portion of the appellate decision, the objection to the application under Order 39 Rule 4 C.P.C. may be filed within fortnight from the date of communication of this order upon supplying a copy well in advance to the learned advocate representing the petitioners before the court below.

The situation as it stands, the disposal of injunction application read with Order 39 Rule 4 C.P.C., and Order 7 Rule 11 C.P.C. would streamline everything.

This Court reposes trust and confidence upon the court below that while taking independent decision with respect to application for injunction read with Order 39 Rule 4 C.P.C., and a separate petition under Order 7 Rule 11 C.P.C. the incidental observation made in the body of this judgement, may not be

encashed in subscribing independent reasons, though there is no harm to look into the observation made in the body of appellate judgement, incidental to taking independent decision of the court below, since, the parameters for decision to come for the disposal of injunction application read with Order 39 Rule 4 C.P.C. are quite different for the decision to be returned in connection with an application under Order 7 Rule 11 C.P.C.

The injunction application as such may be disposed of expeditiously as possible without granting any unnecessary adjournment.

With this observation/direction, the revisional application stands disposed of.

Parties are directed to make communication of this order to the court below.

Urgent certified photostat copy of this order, if applied for, be given to the parties as expeditiously as possible on compliance of all necessary formalities.

**(Subhasis Dasgupta, J.)**