

December 18, 2023
Sl. No.5
Court No.19
s.biswas

CO 4315 of 2023

Ratnabali Investment Private Limited

vs.

Devavrat Builders Private Limited and another

Mr. Aniruddha Chatterjee

Mr. Siddhartha Banerjee

Mr. Shauak Ghosh

Mr. Abir Lal Chakraborty

Mr. Rajib Mullick

Ms. Ayantika Saha

... for the petitioner

Mr. Saptansu Basu, Sr. Adv.

Ms. Hasnuhana Chakraborty

Ms. Mrinalini Mazumder

Mr. Debjyoti Manna

Ms. Moumita Bhattacharjee

... for the opposite party no.1

This revisional application arises out of an order dated December 7, 2023 passed by the learned District Judge, South 24 Parganas in Misc. Appeal No.165 of 2023. The misc. appeal arises out of an order passed in Title Suit No.664 of 2023. The learned Trial Judge had refused the plaintiff's prayer for injunction. The plaintiff preferred the misc. appeal. The learned lower appellate court directed the parties to maintain status quo with regard to nature and character of the suit property, till December 15, 2023. The court was persuaded by the fact that a writ petition, with similar issues as those in the misc. appeal, was pending before the high court and protection should be given to the petitioner, subject to further decision of the High Court. Thus, the status quo was granted for a limited period.

Mr. Chatterjee, learned advocate appearing on behalf of the petitioner, contends that the learned court ought not to have disposed of the misc. appeal as the plaintiff would not have any other forum to pray for extension of the order of status quo, in the event the matter was not decided by the High Court.

Mr. Chatterjee further submits that as the writ petition was not finally taken up, the protection was no longer available and there is no forum for his client to approach.

Mr. Basu, learned senior advocate appearing on behalf of the opposite party no.1, submits that the learned court had no other alternative, but to limit the interim order of status quo on the ground that the High Court was already in seisin of similar matters.

Mr. Basu vehemently contends that the prayer for injunction on December 15, 2023 was refused by the Hon'ble High Court.

Heard the learned advocates for the respective parties. In my opinion, instead of disposing of the misc. appeal, the learned District Judge at Alipore should have kept the matter pending by passing a limited order of status quo, if the learned Judge was satisfied with the case, subject to the decision of the High Court or should not have entertained the appeal at all, if the court was of the view that as the

High Court was in seisin of similar issues, the appeal did not merit any consideration. The ad-interim order had been refused by the learned Trial Judge. The order impugned is modified. The order of disposal of the misc. appeal is set aside.

The revisional application is disposed of. The petitioner is at liberty to take appropriate steps in the misc. appeal. Mr. Basu submits that the prayer for injunction in the misc. appeal should not be allowed. The suit is not maintainable due to the multiple writ petitions which are pending before the high court and in which no protective orders have been passed in favour of the plaintiff. This issue will also be decided by the appropriate appellate court and the misc. appeal shall be disposed of on merits, upon hearing both the parties.

The petitioner is at liberty to file a put up petition immediately, upon notice to the other side.

The revisional application is accordingly disposed of. This Court has not expressed any opinion on the merits of the misc. appeal.

There shall be no order as to costs.

All the parties are directed to act on basis of the server copy of the order.

(Shampa Sarkar, J.)