

OCD-4

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
ORIGINAL SIDE
APOT/6/2023
WITH CS/54/2019
IA NO: GA/1/2023

ALLIANCE BROADBAND SERVICES PRIVATE LIMITED
VS
MANTHAN BROADBAND SERVICES PRIVATE LIMITED (IN LIQUIDATION)

BEFORE:
THE HON'BLE JUSTICE HARISH TANDON
AND
THE HON'BLE JUSTICE PRASENJIT BISWAS
DATE : 31st January, 2023.

APPEARANCE:
Mr. Ratnanko Banerji, Sr. Adv.

J. Sengupta, Adv.
Mr. Rahul Auddy, Adv.
Mr. Aditya Gooptu, Adv.
...for Manthan Broadband.

The Court:- The instant appeal arises from the order dated 19.12.2022 refusing to pass an ad interim order as prayed for. Admittedly, the parties did not exchange the affidavits. The application for injunction was moved for an ad interim order but the trial Court while refusing the same did not pass any

consequential order relating to the filing of affidavits and securing the disposal of the injunction application finally.

Mr. Banerji, learned Senior Advocate appearing for the appellant is very much vocal in his submissions that the trial Court has applied the wrong provisions of law in order to deny the ad interim order as prayed for as the adjudicating authority has not been conferred the power to decide the disputed title, more particularly, whether the shares have been pledged or not. According to him, such declaration can be made by the Civil Court and not by the other forum constituted under the special statute. The aforesaid contention has been refuted and it is submitted that no case for ad interim order of injunction was made out and, therefore, there is no illegality or infirmity in the impugned order.

We have been taken to several averments made in the applications as well as the provisions of law but we find that the matter is at the stage of ad interim order of injunction which was passed on 19th December, 2022. Had there be a direction for exchange of affidavits, the application for injunction could have been disposed of by this time. We, therefore, feel that the justice would be subserved if the application for injunction is disposed of on merit. It is no longer res integra that the consideration at the time of passing an ad interim order of injunction is different than the consideration at the time of disposal of the application for temporary injunction upon exchange of affidavits. The findings made at the ad interim stage cannot stand or have

persuasive effect at the time of disposing of an application for temporary injunction. The apprehension of the appellant that certain findings have been made in the impugned order which would sway the mind of the trial Court at the time of disposal of the application for temporary injunction, we do not think such apprehension in view of the settled proposition of law that those findings are restricted to the ad interim stage and shall have no bearing at the time of disposal of the application for temporary injunction.

In view of the above, we, therefore, direct the respondents to file affidavit-in-opposition to the application for injunction within two weeks from date. Reply, if any, shall be filed within a week thereafter. We request the trial Court to make endeavour to dispose of the application for temporary injunction as expeditiously as possible.

Though we interfere with the impugned order but in view of the discussion hereinabove, such order shall not be treated to have been merged with this order of the Appellate Court.

The appeal and the application are thus disposed of.

(HARISH TANDON, J.)

(PRASENJIT BISWAS, J.)