

OD 2-5

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
ORIGINAL SIDE

APOT/182/2023
[S.A.]WITH
CS/98/2023
IA NO: GA/1/2023
LORD GRIH NIRMAN PRIVATE LIMITED
VS
MERLIN PROJECTS LIMITED

APOT/183/2023
IA NO: GA/1/2023
LORD GRIH NIRMAN PRIVATE LIMITED
VS
MERLIN PROJECTS LIMITED

APOT/263/2023
With CS 98/2023
LORD GRIH NIRMAN PRIVATE LIMITED
VS
MERLIN PROJECTS LIMITED

APOT/264/2023
LORD GRIH NIRMAN PRIVATE LIMITED
VS
MERLIN PROJECTS LIMITED

BEFORE :
THE HON'BLE JUSTICE RAJASEKHAR MANTHA
- A N D -
HON'BLE JUSTICE SUPRATIM BHATTACHARYA
DATE : 12th September, 2023.

Appearance :
Mr. Jishnu Saha, Sr. Adv.
Mr. Aniruddha Chatterjee, Adv.
Mr. K. Thaker, Adv.
Mr. Pradeep Kumar, Adv.
Mr. Aditya Kanodia, Adv.
Ms. Suchismita Ghosh Chatterjee, Adv.
Mr. Ishaan Saha, Adv.
Mr. Yash Singh, Adv.

... for appellant (item nos.2&3)

*Mr. K. Thaker, Adv.
Mrs. Suchismita Ghosh Chatterjee, Adv.
... for appellant (item nos.4&5)*

*Mr. Surajit Nath Mitra, Sr. Adv.
Mr. Abhrajit Mitra, Sr. Adv.
Mr. Jishnu Chowdhury, Adv.
Ms. Rajshree Kajaria, Adv.
Mr. Sankarsan Sarkar, Adv.
Mr. U. Sharma, Adv.
Mr. Shayak Mitra, Adv.
.....for respondent nos.2-5*

The Court : The appeal is directed against an, ad interim order, passed by the Learned Single Judge sitting in Vacation Bench, on 1st June, 2023 in GA No.1 and GA 2 of 2023, arising out of CS No. 98 of 2023.

2. The brief facts relevant to the case are that the Respondent/Plaintiff filed a suit against the Appellant/Defendant in the Ordinary Original Civil Jurisdiction of this Court, inter alia, for specific performance of contract as contained, inter alia, in a note sheet dated 11th November, 2022 to, inter alia, enter into a joint development agreement in respect of 34949 Sq. Ft. of built up area of land at No. 4, Lord Sinha Road, Kolkata 700071. Perpetual injunction was also sought amongst the reliefs.

3. In aid of the prayers in the main suit and application, inter alia, for injunction under Order 39 Rule 1 and 2 was also filed by the Respondent/Plaintiff.

4. The appellant also filed an application for rejection of plaint under Order 7 Rule 11(d) of the Code of Civil Procedure, 1908, contending that the subject matter of the suit was a commercial dispute within the meaning of Section 2 (1) (c) of the Commercial Courts Act of 2015 and the suit was barred.

5. By the impugned order the Learned Single Bench, rejected the application (GA 2 of 2023) under Order 7 Rule 11 filed by the appellant. The Single Bench also ordered an ad interim injunction restraining the Appellants/Respondents from dealing with or disposing of the subject matter of the suit property.

6. The appellant is aggrieved by the impugned order. Detailed arguments have been advanced by the parties on the maintainability of the suit.

7. Mr. Jishnu Saha, learned Senior Counsel for the appellant, submits that the ad interim order, restraining his client from dealing with the subject property, has the effect of prejudicing his client substantially.

8. Mr. Saha submits that the application under Order 7 Rule 11 has been rejected summarily ignoring the law settled in respect of Section 2 (1)(c) of the Commercial Courts Act 2015. He submits that he is entitled to file an appeal against the refusal by the Single Bench to reject the plaint by reason of the decision of the Supreme Court in the case of **Liverpool & London S.P. & I Association Ltd. vs. M.V. Sea Success I & Anr., reported in (2004) 9 SCC 512**, particularly paragraph 114 and 124 thereof. Per contra Mr. Surajit Nath Mitra

argues that the subject matter of the suit is not a “Commercial Dispute” within the meaning of the Act of 2015. A number of decisions of the Supreme Court and various High Courts have been relied upon by the Counsel for the parties.

9. Having heard counsel for the parties, this Court notes that the impugned order is an ad interim measure, in the absence whereof the suit itself may be frustrated. The ad interim order passed was in aid of the main relief and is subject to the final hearing of the application. The observation of the Single Bench at an ad interim stage in an application under Order 7 Rule 11 must also be treated as tentative. Affidavits have been called by the First court.

10. This Court is not inclined to interfere with a purely ad interim view taken by the Single Judge. The parties shall exchange affidavits in the Court below in the two interlocutory applications. Time to file affidavit-in-opposition to the two applications is extended by a period of one week from date. Reply, if any, be filed within a period of three days thereafter.

11. The Single Bench is requested, subject to its business, to take up the two applications as expeditiously as possible.

12. The Single Bench shall proceed to decide the matter being uninfluenced by any observations made hereinabove.

13. In view of the above, all appeals being APOTs 182 of 2023, APOT 183 of 2023, APOT 263 of 2023 and APOT 264 of 2023 and all connected applications are disposed of.

(RAJASEKHAR MANTHA,J.)

(SUPRATIM BHATTACHARYA,J.)

SN/S.Das.