

22-08-2024
Item no.6 CD
Subrata
Bhattacharyya
AR(C)

IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
(Commercial Division)

FMAT No.58 of 2024
Balaram Panja

-vs-

M/s. T.N. Gupta Private Limited & Ors.
with
CAN No.1 of 2024

Mr. Subhankar Das, adv.
Mr. Bikram Sarkar, adv.
Mr. Siddhartha Deb Roy, adv. ...for the appellant

Mr. Mainak Bose, adv.
Mr. Pranav Sharma, adv.
Mr. Francis Samson Correra, adv.
Mr. Rishabh Karnani, adv.
Ms. Sneha Singh, adv. ...for respondents no.1 & 2

We have heard learned counsel for the parties. We are in a position to dispose of this appeal after dispensing with all formalities.

On 16th May 2024 while admitting the appeal, we passed an order restraining the respondents from allotting or transferring one flat and one parking space to any third party in their Ultadanga project, without the leave of the court. From time to time this interim order was extended.

It appears from the impugned judgement and order of the learned court below that the main reason for vacating the ex parte interim order was a serious allegation of fabrication of documents against the appellant-plaintiff and absurdity in their claim in respect of the subject flat and garage.

It appears from the submission made by Mr Bose, learned advocate representing the first and second

respondents, that Pranshu Projects Limited in which the appellant-plaintiff had substantial interest had in 2011 entered into an agreement with the respondents for making construction in relation to a housing project in Dum Dum on a profit sharing basis. Subsequently, in or about 2019 when the Ultadanga project was undertaken by the respondents, the appellant-plaintiff claimed to be entitled to one flat and garage space there on the basis of allegedly fabricated documents. In those agreements, the consideration shown was his alleged share of profit in the Dum Dum project which was in the hands of the respondents and must be taken as consideration for the said flat. There is no evidence of any real consideration of the above kind which the appellant is entitled to and could furnish for transfer of the flat.

In view of the above prima facie facts, the learned judge had rightly vacated the interim order.

We had made the above interim order on 16th May 2024 for a limited time to enable us to hear out the parties in the stay application. It was not on the basis of any substantive hearing.

We dispose of the appeal and the connected stay application by directing that the interim order we passed on 16th May 2024 shall continue unconditionally till 3rd September 2024.

If 50% of the value of the flat, that is to say 50% of Rs.80,00,000/- that is Rs.40,00,000/-, is furnished by the appellant-plaintiff by way of an automatically renewable bank guarantee on a nationalised bank in favour of the first respondent by 3rd September 2024, the interim order will continue till disposal of the suit before the learned court below or until any order to the contrary is passed by a competent court or forum, whichever is earlier.

On failure to furnish the above bank guarantee by the above stipulated date, this interim order will stand automatically vacated.

To avoid any controversy, the date of issue of the bank guarantee shall be the date of receipt thereof.

We request the learned trial judge and the parties to take steps for expeditious trial and disposal of the suit.

[I.P. Mukerji, J]

[Biswaroop Chowdhury, J]