

S/L 1-2
20.9.2024
Court No.19
SD

IN THE HIGH COURT AT CALCUTTA
CIVIL REVISIONAL JURISDICTION

CO 2092 of 2023

With

CAN 1 of 2023

Abdul Karim

Vs.

M/s. Veenapani Vanijya Private Limited & Anr.

With

CO 2557 of 2023

Veenapani Vanijya Pvt. Ltd.

Vs.

Abdul Karim & Anr.

Mr. Abhratosh Majumdar, Sr. Adv.

Mr. Sayan Sinha

Mr. Adil Naser

Mr. K. Roy

*...for the Petitioner
[in CO 2092 of 2023].*

Mr. Jaydip Kar, Sr. Adv.

Mr. Avirup Chatterjee

Mr. Rajendra P. Roychoudhury

Mr. Abirlal Chakraborty

Mr. Rishov Das

*...for the Opposite Party No.1.
[in CO 2092 of 2023].*

These matters though have been brought to the list for extension of interim order, but by the consent of the parties, they are taken up for final disposal.

M/s. Satabdi Infra Projects Private Limited, the opposite party no.2 in both the revisional applications had suffered a decree in *Title Suit No.69 of 2018*, a suit for eviction filed by *Veenapani Vanijya Pvt. Ltd.*, the petitioner in *CO 2557 of 2023* and the opposite party no.1 in *CO 2092 of 2023*.

The said decree has been put into execution giving rise to *Title Execution Case No.24 of 2022* before the 5th Court of learned Civil Judge (Senior Division) at Alipore, District: 24 Parganas (South).

One *Abdul Karim*, the petitioner of *CO 2092 of 2023*, in the said execution case, had filed an application under Order XXI Rules 97 to 101 of the Code of Civil Procedure for declaration of his independent right, title, interest over the suit property as tenant, registered as *Miscellaneous Case No.100 of 2023*.

In the said Misc. Case, the applicant had filed an application dated May 18, 2023 under Order XXXIX Rules 1 and 2 of the code for an order of injunction, but the Executing Court had refused to pass an *ad interim* order of injunction on the said application.

The applicant on June 6, 2023 had filed an application under Section 151 of the Code to renew his prayer for *ad interim* order of injunction.

The Executing Court vide order dated June 6, 2023 had passed an *ad interim* order of injunction restraining the decree-holders, their men and agents from demolishing the suit property till the matter is heard in its entirety and the decree-holder was further restrained from alienating, transferring or disposing of the suit property to any other person or create any sort of third party interest in the suit property or changing the nature and character of the suit property till June 26, 2023.

The decree-holder, to challenge the said order, has taken out an application under Section 115A of the Code registered as *Civil Revision Case No.5 of 2023* before the learned District Judge at Alipore, District: 24 Parganas (South).

The Revisional Court below by the order dated June 15, 2023 had stayed the operation of the said *ad interim* order of injunction which is under challenge in *CO 2092 of 2023*.

An application under Section 115A of the Code assailing an order of injunction since is not maintainable; the order dated June 15, 2023 is not sustainable and is accordingly set aside.

No fruitful purpose would be served by keeping the said revisional application pending, as such, the *Civil Revision Case No.5 of 2023* is dismissed as *not maintainable*.

The decree-holder however has subsequently challenged the said order dated June 6, 2023, in *CO 2557 of 2023*.

The application under Order XXXIX Rules 1 and 2 of the Code dated May 18, 2023 and the application under Section 151 of the Code dated June 6, 2023 filed by the applicant of the said Misc. Case are pending.

This Court is of the opinion that justice would be subserved if the said applications are directed to be disposed of expeditiously but the applicant since has been enjoying an order of injunction initially passed by the Executing Court and thereafter

passed by this Court in one of the revisional applications, let the said order of injunction directing the parties to maintain *status quo* with regard to the nature and character and possession of the suit property be maintained with a further order of injunction restraining the decree-holder from demolishing the structure(s), if there be any, till disposal of the said applications.

Mr. Kar, learned senior advocate for the decree-holder however submits that the entire structure over the suit property had already been demolished.

Mr. Majumdar, learned senior advocate for the applicant of the said Misc. Case heavily disputes such submission of Mr. Kar.

It is made clear that the parties are free to demonstrate before the Executing Court regarding the present condition of the suit property.

In view of the nature of the said applications, the Executing Court shall make all endeavour to dispose of the said applications as expeditiously as possible, in accordance with law, without being influenced by the fact that this Court has retained the order of injunction.

Parties are directed to take steps to make the said applications ready for disposal; all points including the point of maintainability of the said Misc. Case and the applications thereto are kept open.

CO 2092 of 2023 and CO 2557 of 2023 are disposed of with the above terms and observations without any order as to costs.

In view of the disposal of the revisional applications, the application for vacating the interim order being CAN 1 of 2023 filed in CO 2092 of 2023 has become infructuous and is dismissed accordingly, but without any order as to costs.

Parties to act on the server copy of this order duly downloaded from the official *website* of this Court.

Urgent Photostat certified copies of this order, if applied for, be supplied to the parties upon compliance with all requisite formalities.

(Biswajit Basu, J.)