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Ct. 19
08.08.2024

*In The High Court At Calcutta
Civil Revisional Jurisdiction
(Appellate Side)*

C.O. 2753 of 2024

With

C.O. 2391 of 2024

Lily Das & Anr.

Vs.

Samit Ranjan Das

Mr. Biswaroop Bhattacharyya,
Mr. Sounak Bhattacharya,
Mr. Dhilon Sengupta,
Mr. Ayan Chakraborty,
Ms. Sohini Mukherjee ... For the petitioners.

Mr. Aniruddha Chatterjee,
Mr. Dipendra Nath ChanChunder,
Mr. Altamosh Alim,
Ms. Ajeyaa Choudhury ... For the opposite party.

The ad-interim order of injunction passed in the connected Miscellaneous Appeal and extension thereof are under challenge in these two revisional applications, as such, both the matters are taken up for analogous hearing and disposal.

The opposite party has filed a suit for permanent injunction being Title Suit No. 545 of 2024 pending before the 9th Court of learned Civil Judge (Senior Division), at Alipore, District – 24 Parganas (South).

In the said suit, the plaintiff, the opposite party herein has a pending application under Order XXXIX Rules 1 and 2 of the Code of Civil Procedure.

The learned Trial Judge, in the order dated April 29, 2024 has recorded that the plaintiff filed hazira along with an application to move the ad-interim prayer on the ground as stated therein.

The plaintiff, treating the said order as refusal to his prayer for an ad-interim order of injunction, has preferred an appeal being Miscellaneous Appeal No. 223 of 2024. The said appeal was filed out of time, for condonation of the said delay, the plaintiff had filed an application under Section 5 of the Limitation Act, 1963.

The learned District Judge-in-charge, Alipore, District-24 Parganas(South) by the order no. 1 dated June 25, 2024 had passed an

ad-interim order of injunction directing the parties to maintain *status quo* in respect of transfer of the suit property to any third party or any portion thereof and also in respect of possession of it till July 25, 2024. The said order is under challenge in C.O. 2391 of 2024.

The said ad-interim order of injunction was extended vide order no. 2 dated July 07, 2024 till August 27, 2024 which is under challenge in C.O. 2753 of 2024.

The defendants are challenging the said two orders *inter alia*, on the grounds, that the impugned ad-interim orders have been passed without condoning the delay in filing the said appeal, the other ground of challenge is that the petitioners are the admitted owners of the suit property, as such there cannot be an order of injunction restraining them from transferring it.

During the pendency of the revisional applications, the appeal Court below vide order no. 8 dated August 06, 2024 has condoned the delay in filing the said appeal *subject to payment of costs of Rs. 3000/-*. The said order is not under challenge till date, therefore, the first ground of challenge to the orders impugned has diluted to some extent.

Be that as it may, it appears from the record that the suit property is a part of the building situated at premises No. 131/ 2, Dr. Megnath Saha Sarani, Kolkata-700009, over which the defendants admittedly have acquired right, title, interest by virtue of a deed of partition dated January 14, 2000, that being the position, an ad-interim order of injunction restraining the defendants from exercising their right of ownership over the suit property, which includes the right of transfer, is not sustainable, therefore, the plaintiff has failed to make out a *prima facie* case for grant of an ad-interim order of injunction.

The order impugned dated June 25, 2024 has lost its force as such, challenge to it has become infructuous, C.O. 2391 of 2024 is dismissed. However, C.O. 2753 of 2024 is allowed by setting aside the order dated July 07, 2024. There shall be no order as to costs.

This Court since has already held that the plaintiff is not entitled to the ad-interim order of injunction, in view of the limited scope of the connected Miscellaneous Appeal, no fruitful purpose would be served by keeping it pending, accordingly, Miscellaneous Appeal No. 223 of 2024 pending before learned District Judge-in-charge, Alipore, District-24 Parganas(South) is treated as disposed of.

The learned Trial Judge is requested to expedite the disposal of the pending application for injunction.

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

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

(Biswajit Basu, J.)