

**IN THE HIGH COURT AT CALCUTTA
CIVIL REVISIONAL JURISDICTION
APPELLATE SIDE**

C.O. 2446 of 2024

(Assigned)

Julien Educational Trust

Vs.

Boon Realtors private Limited

For the petitioner

:Mr. Aniruddha Chatterjee, Adv.

Mr. Shameek Ray, Adv.

Mr. Pourush Bandopadhyay, Adv.

Mr. Niket Ojha, Adv.

Mr. Aritra Pal, Adv.

For the Opposite Party

:Mr. Saptansu Basu, Sr. Adv.

Mr. Amit Kumar Nag, Adv.

Mr. Partha Banerjee, Adv.

Ms. Pritha Bhowmik, Adv.

Heard On

:19.07.2024 & 05.08.2024,

Judgment On

:04.09.2024

Bibhas Ranjan De, J. :

1. This instant revisional application is directed against an order dated 18.04.2024 passed by Ld. Judge in-charge, District

Judge, South 24 Parganas at Alipore in Misc. Appeal No. 125 of 2024 arising out of Title Suit No. 430 of 2024 wherein Ld. Judge passed an ad interim order of injunction in favour of the opposite party in an appeal filed by the opposite party itself assailing the order of refusal of ad interim injunction dated 22.03.2024 Passed by the Ld. Civil Judge, Senior Division, 4th Court, Alipore in an application under Order XXXIX Rule 1 & 2 of the Code of Civil Procedure (for short CPC) filed by the opposite party in connection with Title Suit No. 430 of 2024.

Brief facts:-

2. From perusal of the application made by the opposite party under Order XXXIX Rule 1 & 2 of CPC it appears that by three separate Deeds of Conveyance dated 11.12.2006, bearing Deed No. 03859 and 11.12.2006 bearing Deed No. 03850 and 03.01.2007 bearing Deed No. 00015 Mehul Overseas Private Limited, Kundan Investment Private Limited & Prime Global Private Limited bought 15 Cottahs 8 Chittacks & 29 sq.ft. of land at premises no. 3/1, Bhagwan Mahabir Sarani, P.S.- Bhowanipore, Kolkata 700020. The said three companies created equitable mortgage of the said property in favour of the

Indian Overseas Bank. As they failed to discharge their liabilities towards the said bank, the Indian Overseas Bank decided to sale the property through public auction and the opposite party herein successfully purchased the subject land through auction and a Sale Certificate dated 30.06.2021 was issued in favour of them under Rule 9 (6) of the Security Interest (Enforcement) Rules 2002. Subsequently, formal deed of sale dated 08.10.2021 was executed and registered in favour of the opposite party by the bank. Pursuant to the said Sale Certificate, peaceful and vacant possession of the said land was duly handed over and delivered to the opposite party. In the Northern side of the said premises the petitioner herein is running a school under the name of Julien Day School. On 30.10.2023 the petitioner along with some agents allegedly allowed the students of the school to play on the said premises of the opposite party without taking any permission from them. The opposite party immediately complained about the incident to the Principal of the said school and requested him not to allow the students to enter the said premises but no fruitful result came out from the said persuasion and the petitioner

continued to allow the children of the school to enter the premises of the opposite party. Finding no other alternative the opposite party filed a suit against the petitioner seeking injunction restraining them from allowing their students to enter and play inside the said premises of the opposite party before the Court of Ld. Civil Judge, Senior Division, 4th Court, Alipore. The opposite party also filed an application Order XXXIX Rule 1 & 2 of CPC. Vide an Order dated 22.03.2024 the Ld. Judge refused to grant ad interim order of injunction.

3. Being aggrieved by and dissatisfied with the said order the opposite party herein filed an appeal being Misc. Appeal No. 125 of 2024 challenging the order dated 22.03.2024 wherein the Ld. Judge in-charge, District Judge, Alipore granted an ad interim injunction thereby restraining the petitioner from disturbing the peaceful possession of the opposite party in respect to the said premises. The petitioner herein by the present revision application has impugned the said order.

Argument advanced:-

4. Ld. Counsel, Mr. Aniruddha Chatterjee, appearing on behalf of the petitioner has stated that the impugned order is passed

without assigning any reasons and therefore the order is not sustainable in the eye of law. An order without reasons is not an order at all and mere quoting of few terminologies from the statute or re-iteration of some pleading cannot be equated to be a valid reason.

5. Mr. Chatterjee has further stated that the order impugned has been obtained by the opposite party herein at the behest of suppression of material facts with regard to possession of the subject premises. In support of this contention, Mr. Chatterjee by relying on the subject deed has tried to make this Court understand that the opposite party has only got deemed possession of the subject land and therefore the claim of the opposite party that they have exclusive and absolute possession over the schedule property is devoid of any merit.

6. In support of his contention, Mr. Chatterjee has relied on a good number of cases which are listed as follows:-

- ***Morgan Stanley Mutual Fund vs. Kartick Das reported in (1994) 4 Supreme Court Cases 225***

- ***GPT Health Care Private Limited vs. Soorajmull Nagarmull & Ors. reported in 2017 SCC Online Cal 16490***
- ***The Institute of Indian Foundrymen & Anr. vs. Dr. Navojit Basu & Ors. reported in 2014 SCC OnLine Cal 19639***
- ***Smt. Madhu Chhanda Bandyopadhyay @ Madhuchhanda Banerjee & Ors. vs. Smt. Shankari Kayal reported in 2016 SCC OnLine Cal 6501***
- ***Shiv Kumar Chandha vs. Municipal Corporation of Delhi and others reported in (1993) 3 Supreme Court Cases 161.***

7. Per contra, Ld. Senior Counsel, Mr. Saptansu Basu, appearing on behalf of the opposite party has contended that the petitioner herein did not contest the injunction application and directly filed the revision application. Therefore, the petitioner must be directed to contest the injunction application before the Lower Court being the Court of first instance instead of preferring a revision application in this forum.

8. Ld. Senior Counsel on the point of assigning of reasons raised by the petitioner has mainly canvassed his argument on the ground that no party can be forced to suffer for the inaction of the Judicial Officer for omission to record reasons and no order should be set aside only on the ground of non-recording of reason.

9. Before parting with, Mr. Basu has duly supported the impugned order and has submitted that there are sufficient materials available with the Court to support the impugned order and the petitioner is not in any way aggrieved by the order dated 18.04.2024 as ex-parte injunction is only for a limited period of time and is rightly passed for protecting and preserving the said premises of the opposite party from any future damage, irreparable loss and/or from serious mischief.

10. In support of his contention, Mr. Basu, Ld. Senior Counsel, has relied on a couple of cases:-

- ***NEPC Micon Ltd. Vs. Magma Leasing Ltd. & Anr. reported in 1999 SCC OnLine Cal 133***
- ***A. Venkatasubbiah Naidu vs. S. Chellapan and others reported in (2000) 2 Supreme Court Cases 695***

Analysis:-

- 11.** After hearing rival contentions of the parties, I find that only contentious issue is whether the impugned order is sustainable or not owing to lack of reasons.
- 12.** On behalf of the parties to this revision application Ld. Counsels relied on their respective referred cases on the issue of sustainability.

Ratio of the cases relied on behalf of the parties:-

In favour of the **Petitioner:-**

- 13.** In ***Shiv Kumar Chandha*** (supra) the Hon'ble Apex Court observed:-

“35. As such whenever a court considers it necessary in the facts and circumstances of a particular case to pass an order of injunction without notice to other side, it must record the reasons for doing so and should take into consideration, while passing an order of injunction, all relevant factors, including as to how the object of granting injunction itself shall be defeated if an ex parte order is not passed. But any such ex parte order should be in force up to a particular date before which the plaintiff should be required to serve the notice on the defendant concerned. In the Supreme Court Practice 1993, Vol. 1, at page 514, reference has been made to the views of the English Courts saying:

“Ex parte injunctions are for cases of real urgency where there has been a true impossibility of giving notice of motion....

An ex parte injunction should generally be until a certain day, usually the next motion day....”

14. In ***Morgan Stanley Mutual Fund*** (supra) Hon’ble Three Judges Bench of the Supreme Court handed down the following guidelines for adjudication of ex-parte injunction:-

“36. As a principle, ex parte injunction could be granted only under exceptional circumstances. The factors which should weigh with the court in the grant of ex parte injunction are—

(a) whether irreparable or serious mischief will ensue to the plaintiff;

(b) whether the refusal of ex parte injunction would involve greater injustice than the grant of it would involve;

(c) the court will also consider the time at which the plaintiff first had notice of the act complained so that the making of improper order against a party in his absence is prevented;

(d) the court will consider whether the plaintiff had acquiesced for sometime and in such circumstances it will not grant ex parte injunction;

(e) the court would expect a party applying for ex parte injunction to show utmost good faith in making the application.

(f) even if granted, the ex parte injunction would be for a limited period of time.

(g) General principles like prima facie case, balance of convenience and irreparable loss would also be considered by the court.”

15. In the case of ***The Institute of Indian Foundrymen***

(supra) Co-ordinate Bench of this Hon’ble Court opined that:-

“ ... However, without referring to the circumstances in which the Trial Court declined the ad interim injunction, the Appellate Court considered the matter afresh and restrained the petitioner society from giving effect to the resolutions that were then proposed to be passed at its annual general meeting then convened to be held on September 19 and 20, 2014.

The Appellate Court appears to have missed the reason indicated in the Trial Court order for declining the ex parte injunction. It is necessary to reiterate that an ex parte order is an exception and not the rule. Merely because a suit has been filed or an appeal has been preferred, it is not implied that an order has to be passed at the ad interim stage without consideration of the merits of the matter or, more importantly, the balance of convenience...”

16. The Co-Ordinate Bench of this Hon’ble Court in the case of ***Smt. Madhu Chhanda Bandyopadhyay*** (supra) made an observation to the effect that:-

“6. Providing reasons is one of the fundamental duties entrusted upon the Court in judicial dispensation. The aforesaid provision indicates the duties cast on the Court at the time of passing an ad interim order of injunction to record reasons. The reason is the heart and soul of the order without which it cannot survive on the parameters of law.

10. The Court of Appeal below ought to have bear in mind that the scope of an appeal is limited in the sense that the consideration is whether the Trial Court followed the principles of law enunciated and laid down in the abovementioned decisions at the time of passing an ex parte ad interim order of injunction. If the Appellate Court found that the impugned order is completely bereft of reasons and in contravention to the provisions as indicated above, it should not venture to enter into the merit and demerit of the application but to have relegated the parties to the Trial Court to ventilate their grievance after setting aside the said ex parte ad interim order of injunction.”

17. In **GPT Health Care Private Limited** (supra) the Division Bench of this Hon’ble Court held:-

“13. As to the Supreme Court judgment cited by the plaintiff, a mandatory injunction was declined by the trial court upon documents being produced by either side. The appellate court issued the mandatory injunction. The Supreme Court held that the appellate court erred since it could not be said that the view taken by the trial court was not a possible view. The plaintiff has cited the judgment for the proposition that unless

the discretion available to the trial court is shown to have been exercised in a perverse manner or a completely untenable view is evident from an order impugned, the appellate court should not interfere with the discretion exercised by the trial court.

14. *Unfortunately, on the basis of the averments in the petition and the grounds as to urgency indicated therein, the trial court in this case could not have been prompted to take up the matter with the kind of alacrity that has been shown. The trial court did not indicate any reasons as to why it was necessary to pass an ex parte ad interim order and the petition did not contain adequate grounds in such regard. The construction had already commenced. That the construction had commenced on March 5, 2017 could not have been the guiding factor in this case since, on the plaintiff's version, the plaintiff was aware from November, 2016 that the appellant herein proposed to make a construction on the land in the appellant's possession. Even if the plaintiff had rushed to court within a day or two of the construction commencing, some modicum of reasons or rationale in its favour could have been discovered. But the plaintiff waited for more than a week before coming to court and, in between, there was a complaint where the innocuous allegation was of the boundary wall of the plaintiff was being damaged; not of a person wrongfully constructing on the plaintiff's property.*

15. *The only object of the present exercise is to ensure that trial courts are careful in exercising their discretion to entertain interlocutory applications ex parte*

or pass ex parte orders. It is only in the exceptional case that an ex parte order may be passed when it appears to the court that denial of the order at such stage would amount to the action being defeated or in irreparable injury or gross prejudice being occasioned to the suitor.

16. *Since the case carried by the plaintiff to the trial court did not meet such high standards, the trial court erred in entertaining the prayer for an ex parte order and passing an ex parte order. Accordingly, the order impugned dated March 15, 2017 in so far as it issued an injunction in the form of status quo being required to be maintained is set aside and the trial court is requested to hear out the injunction application on merits within a period of six weeks from date. It is made clear that the substance of the present order is confined to the ex parte order and is not a commentary on the general merits of the plaintiff's case. In any event, the trial court will be free to arrive at its own conclusion at the final interlocutory stage uninfluenced by any of the observations herein."*

In favour of the **Opposite Party:-**

- 18.** The Hon'ble Supreme Court in the case of **A. Venkatasubbiah Naidu** (supra) laid down the following :-

"15. What would be the position if a court which passed the order granting interim ex parte injunction did not record reasons thereof did not require the applicant to perform the duties enumerated in clauses (a) and (b) of Rule 3 of Order 39. In our view such an order can be deemed to contain such requirements at

least by implication even if they are not stated in so many words. But if a party, in whose favour an order was passed ex parte, fails to comply with the duties which he has to perform as required by the proviso quoted above, he must take the risk. Non-compliance with such requisites on his part cannot be allowed to go without any consequence and to enable him to have only the advantage of it. The consequence of the party (who secured the order) for not complying with the duties he is required to perform is that he cannot be allowed to take advantage of such order if the order is not obeyed by the other party. A disobedient beneficiary of an order cannot be heard to complain against any disobedience alleged against another party.

21. It is the acknowledged position of law that no party can be forced to suffer for the inaction of the court or its omissions to act according to the procedure established by law. Under the normal circumstances the aggrieved party can prefer an appeal only against an order passed under Rules 1, 2, 2-A, 4 or 10 of Order 39 of the Code in terms of Order 43 Rule 1 of the Code. He cannot approach the appellate or revisional court during the pendency of the application for grant or vacation of temporary injunction. In such circumstances the party which does not get justice due to the inaction of the court in following the mandate of law must have a remedy. So we are of the view that in a case where the mandate of Order 39 Rule 3-A of the Code is flouted, the aggrieved party, shall be entitled to the right of appeal notwithstanding the pendency of the application for grant or vacation of a temporary injunction, against the order remaining in force. In such appeal, if preferred, the appellate court shall be obliged to entertain the appeal and further to take note of the omission of the subordinate court in complying with the provisions of Rule 3-A. In appropriate cases the appellate court, apart from granting or vacating or modifying the order of such injunction, may suggest suitable action against the

erring judicial officer, including recommendation to take steps for making adverse entry in his ACRs. Failure to decide the application or vacate the ex parte temporary injunction shall, for the purposes of the appeal, be deemed to be the final order passed on the application for temporary injunction, on the date of expiry of thirty days mentioned in the Rule.”

19. In the case of **NEPC Micon Ltd.** (supra) the Division Bench of this Hon’ble Court held:-

“24. To hold that an ex parte unreasoned interlocutory order is void would also lead to the absurd result that the very object which is sought to be achieved by the petitioner in protecting himself against irreparable injury might be defeated by the failure of the Court to act in terms of Order 39 Rule 3—a factor over which no litigant can have any control.”

20. After careful perusal of all the above referred cases, I am sorry to subscribe to the view of the Ld. Senior Counsel appearing on behalf of the opposite party that the observations made in **A. Venkatasubbiah Naidu** (supra) & **NEPC Micon Ltd.** (supra) are squarely applicable to the case at hand as the factual matrix which led to the observations that have been taken assistance of by the Ld. Senior Counsel are not at all

identical with the factual position of the case dealt with by this Court.

21. However, it is a settled proposition that reasons introduce clarity in an order passed by a Court. On plainest consideration of Justice, the Ld. Judge of Appellate Court ought to have set forth its reasons, howsoever brief, in its order indicative of an application of its mind, all the more when its order is amenable to further avenue of challenge. Therefore, the absence of reasons has rendered the impugned order not sustainable.

22. In the light of the aforesaid discussion, the impugned order dated 18.04.2024 passed by Ld. Judge in-charge, District Judge, South 24 Parganas at Alipore in Misc. Appeal No. 125 of 2024 arising out of Title Suit No. 430 of 2024 is hereby set aside.

23. The Appellate Court is hereby requested to fix the date of hearing of the said Appeal within 2 (Two) weeks from date of communication of this order in presence of both the parties or their respective Counsels and Ld. Judge is further requested to dispose of the said Appeal positively within 2 (Two) weeks

therefrom after affording an opportunity of hearing to both the parties and by recording proper reasons.

- 24.** However, It is made abundantly clear that none of the observations made hereinabove shall have any impact on the merit of the appeal and the Appellate Court shall not be swayed by it and shall decide the same after applying independent judicial mind in accordance with law.
- 25.** As a sequel, Civil Revision Application being no. 2446 of 2024 stands disposed of.
- 26.** Interim order, if there be any, stands vacated.
- 27.** Connected applications, if there be, also stands disposed of accordingly.
- 28.** All parties to this revisional application shall act on the server copy of this order downloaded from the official website of this Court.
- 29.** Urgent Photostat certified copy of this order, if applied for, be supplied to the parties upon compliance with all requisite formalities.

[BIBHAS RANJAN DE, J.]