

12.09.2024
Item Nos.12 DL
& 1531 ML
Ct.19
A.J.

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

**C.O. 3082 of 2024
with
C.O. 3083 of 2024**

**Md. Shakil
–Vs–
Salma Bibi & Ors.**

Mr. Partha Pratim Roy,
Ms. Madhushri Dutta.

.....for the petitioner.

Mr. Shibo Prosad Ghose.

.....for the opposite parties.

These two applications under Article 227 of the Constitution of India since are arising out of the selfsame suit, are taken up for analogous hearing and disposal.

The defendant no.1 in a suit for declaration and injunction is the petitioner of the instant application(s).

The said suit being *Title Suit No.391 of 2023* is pending before the learned Civil Judge (Junior Division) at Bidhannagar, District: 24 Parganas (North).

The learned Trial Judge, by the order dated December 06, 2023, had refused to pass an *ad-interim* order of injunction on the application filed by the plaintiff, the opposite party no.1 herein under Order XXXIX Rules 1 and 2 of the Code of Civil Procedure; aggrieved thereby, the plaintiff has preferred the connected *Misc. Appeal No. 6 of 2024* which is pending before the 2nd Court of the learned Additional District and Sessions Judge at Barrackpore, District: 24-Parganas (North).

The Appeal Court below, by the order impugned dated February 27, 2024, had passed an *ad-interim* order of injunction restraining the defendants from transferring any right, title and possession in respect of the property mentioned

in the first schedule appended to the plaint to any stranger or to create any third party interest or to install any electric connection/meter at the owner's allocation as mentioned in the development agreement; in addition thereto, the parties were directed to maintain *status quo* in respect of their respective possession over the said schedule property till the next date of hearing.

Mr. Shibo Prosad Ghose, learned advocate for the plaintiff, the opposite party no.1 herein submits that such order was subsequently extended from time to time and is still subsisting.

Mr. Partha Pratim Roy, learned advocate for the petitioner submits that the plaintiff's claim in the suit is based on the development agreement dated April 01, 2019. The petitioner has filed an application under Section 8 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as "*the said application*") for referring the parties to arbitration since there is an *Arbitration Clause* in the said agreement; the learned Trial Judge should have disposed of the said application first as the maintainability of the suit is dependent upon the outcome of the said application.

Mr. Ghose, on the other hand submits that the suit is not based on the said development agreement, as such, in spite of existence of such an *Arbitration Clause* in the said agreement, the provision of section 8 of the said Act of 1996 is not applicable to the facts and circumstances of the present case.

Heard learned advocate(s) for the parties, perused the materials on record.

The maintainability of the suit is dependent on the outcome of the said application, therefore, the said application needs to be disposed of first but till such disposal, the order of

injunction passed by the Appeal Court below shall continue till the disposal of the said application and in the event, the said application fails, the said interim order shall continue till the disposal of the application for injunction pending before the learned Trial Judge.

The plaintiff is entitled to take all points including the point that the subject matter of the suit is not covered by the said *Arbitration Clause* in her written objection to the said application, to be filed within a period of **two weeks from date**.

The learned Trial Judge shall dispose of the said application as expeditiously as possible, in accordance with law, without granting any unnecessary adjournment to either of the parties.

In the event the said application fails, the learned Trial Judge shall dispose of the application for injunction on its merit in accordance with law, without being influenced by the fact that this Court has retained the order of injunction passed by the Appeal Court in *Misc. Appeal No. 6 of 2024*.

In C.O. 3083 of 2024, the petitioner is praying a direction for expeditious disposal of the said application; such direction has already been passed above.

C.O. 3082 of 2024 and C.O. 3083 of 2024 are disposed of with the above terms 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 copy of this order, if applied for, be supplied to the parties subject to compliance with all requisite formalities.

(Biswajit Basu, J.)