

13.09.2024
Item Nos.22 & 23
DL, Ct.19
A.J.

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

C.O. 3196 of 2024

with

C.O. 3301 of 2024

Chinsurah Heights Developers Pvt. Ltd.

-Vs-

RSSM Infra Pvt. Ltd. & Ors.

Mr. Debjit Mukherjee,
Mr. Dyutimoy Paul,
Mr. Akash Dutta.

.....for the petitioner.

Mr. Siddhartha Banerjee,
Mr. Dipayan Kundu,
Mr. Abhishek Baran Das,
Ms. Srijoni Chongdar,
Mr. Sritikantha Mitra,
Mr. Soumajit Majumder.

.....for the opposite party no.1.

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

The plaintiff in a suit for declaration and permanent injunction is the petitioner of both the applications.

The said suit being *Title Suit No. 296 of 2024* is pending before the 2nd Court of the learned Civil Judge (Junior Division) at Hooghly.

The learned Trial Judge by the order dated June 13, 2024 has passed an *ad-interim* order of injunction on the plaintiff's application under Order XXXIX Rules 1 and 2 of the Code of Civil Procedure restraining the defendant no.1 from disturbing the peaceful possession of the plaintiff over the suit property and/or alienating the same to different intending purchasers till July 15,

2024; aggrieved thereby, the defendant no.1 has preferred the connected *Misc. Appeal No.69 of 2024* pending before the learned District Judge, Hooghly.

The Order No. 4 dated August 14, 2024 passed in the said appeal is under challenge in *C.O. 3196 of 2024*.

The Appeal Court below by the said order has restrained the appellant from alienating and/or creating any third party interest in respect of the suit property till the next date, i.e. August 31, 2024.

The Appeal Court below by the Order No.6 dated September 03, 2024 has overruled the objection of the respondent as to the maintainability of the said appeal and has allowed the application for stay filed by the appellant, thereby has stayed the operation of the order under challenge in the said appeal till the disposal of it.

C.O. 3301 of 2024 is directed against the said order.

Staying the operation of the order impugned in an appeal pending disposal of it, particularly when such order is an order of injunction, would amount to allowing the appeal itself, as such, is not sustainable; therefore, the said Order no.6 dated September 03, 2024 is set aside to the extent of allowing the appellant's application for stay.

The Miscellaneous Appeal needs to be disposed of expeditiously on its merit in accordance with law, without being influenced by the fact that this Court has retained the order of injunction passed by it on August 14, 2024, and in doing so, shall not grant any unnecessary adjournment to the parties; but to protect

the interest of the parties the Order no. 4 dated August 14, 2024 passed in the said Appeal is reinforced and shall continue till the disposal of the said Appeal.

The plaintiff has prayed for the order of injunction in aid of the suit; therefore, the Appeal Court below, while deciding the said Appeal shall consider the maintainability of the suit as urged by Mr. Banerjee, learned advocate for the opposite party no. 1.

C.O. 3196 of 2024 and C.O. 3301 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.)