

ORDER SHEET
IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
ORIGINAL SIDE
[Commercial Division]

AO-COM/3/2024
WITH CS/1/2024
IA NO: GA-COM/1/2024

PRIMELINK TRADECOM LLP
VS
KONSORTIA PROJECT PVT LTD AND ORS

BEFORE:
The Hon'ble JUSTICE SOUMEN SEN
AND
The Hon'ble JUSTICE BISWAROOP CHOWDHURY
Date : 2nd December, 2024.

Appearance:

Mr. Sabyasachi Chowdhury, Sr. Adv.
Mr. Shounak Mukhopadhyay, Adv.
Mr. Kallol Saha, Adv.
Ms. Sweta Bhattacharya, Adv.
...for the appellant

Mr. Chayan Gupta, Adv.
Mr. Rittick Chowdhury, Adv.
Mr. Dwip Raj Basu, Adv.
...for the respondent no.1.

Mr. Debnath Ghosh, Sr. Adv.
Mr. Sudarshan Roy, Adv.
Mr. Debayan Ghosh, Adv.
Mr. Deep Narayan Mukherjee, Adv.
... for respondent nos. 2 to 10.

Mr. S. K. Poddar, Adv.
... for respondent nos. 11&12.

The Court: Learned Counsel for the parties have placed before this Court the order passed by the Hon'ble Supreme Court in Special Leave to Appeal (C) No(S). 20297/2024 dated 6th September, 2024 and Civil Appeal Nos. 20894-20896/2024 dated 18th November, 2024 and submitted that in view of the observation of the Hon'ble Supreme Court in paragraphs 7 and 8 of the order dated 18th November, 2024, the matter may be disposed of by learned single

Judge on merits after completion of affidavits as directed. However, Mr. Chayan Gupta, learned Counsel appearing on behalf of the plaintiff has submitted that the appellant has made illegal construction. The plaintiff alleged change of user in deviation of the municipal laws. However, it has been fairly submitted that these objections have been taken in the affidavit-in-reply filed in the pending proceeding. Although, there has been an observation by the Hon'ble Supreme Court in paragraph 8 that the Division Bench may proceed with the appeal which is against an ad-interim order passed by the said application since the hearing of the appeal might cause an impediment in disposal of the injunction application, the learned Counsel for the parties have agreed that the learned trial Court shall proceed with the hearing of the injunction application filed by the plaintiff.

In view of such consensus, we are disposing of the appeal by confirming the ad-interim order dated 3rd April, 2024. However, we make it clear that we have followed the direction of the Hon'ble Supreme Court passed earlier and it would be open for the learned trial Court to decide. It is needless to mention that the learned single Judge while deciding the injunction application would consider the specific defences and objections raised by the petitioner with regard to the induction, occupation and nature of use of the portion presently under the occupation of the appellant in the said proceeding itself. We have been informed that in the petition as well as affidavit-in-reply, details have been given in support of such allegation. Mr. Chayan Gupta, learned Advocate has submitted that a connected application has been filed where instances of

same and similar breaches have been pleaded and learned single Judge may decide all the applications together in order to avoid conflict of orders. Since we are not aware of the nature of the application filed, it would be open for the learned single Judge to decide the need for hearing of all the related applications in this regard.

Mr. Sabyasachi Chowdhury, learned Senior Counsel appearing on behalf of the appellant submitted that before the learned single Judge the locus of the plaintiff is under challenge and the said issue may also be taken into consideration while deciding the injunction application filed by the plaintiff.

We make it clear that all points are left open to be decided on merits by learned single Judge.

Appeal and the applications are disposed of.

(SOUMEN SEN, J.)

(BISWAROOP CHOWDHURY, J.)