OD-18

ORDER SHEET

APOT/337/2024
WITH
CS/138/2024
IA NO: GA/1/2024

IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
ORIGINAL SIDE

VIKASH SOMANI
VERSUS
INVESTOR EDUCATION AND PROTECTION FUND AUTHORITY AND ORS.

BEFORE:
The Hon'ble JUSTICE SOUMEN SEN
AND
The Hon'ble JUSTICE BISWAROOP CHOWDHURY
Date : 20th November, 2024.

Appearance:
Mr. Arik Banerjee, Adv.
Mr. Debjani Sengupta, Adv.
S.K. Mohiuddin, Adv.
Mr. Rajib Mullick, Adv.
Ms. Ayantika Saha, Adv.
...for the appellant

Mr. U.S. Menon, Adv.
Mr. Abhirup Chakraborty, Adv.
...for respondent no.2

The Court: The plaintiff is the appellant. The plaintiff is aggrieved by a judgment and order passed by the learned Single Judge on 22nd August, 2024 by which his prayer was for ad interim order restraining the respondent no.2 from transferring 550 shares in favour of the defendant no.2. It is alleged that over a period of time, the numbers increased which has now become 4400 shares. The cause of action as pleaded in the present suit is of 5th September, 2022 when the defendant no.2 disclosed in his affidavit the shares of the plaintiff are transferred to IEPF and further on 21st November, 2022 when the defendant no. 2 further disclosed in his second affidavit that the shares remain with IEPF.

Prior to the present proceeding, a suit was instituted by the plaintiff against Reliance Industries Limited and three others in which the plaintiff has prayed for declaration of title in respect of 550 equity shares of the defendant no.1. The said suit was dismissed with a finding that the plaintiff had failed to prove the transactions by which he claimed to have sold the shares to defendant no.3 in the said proceeding. There is a clear finding that the plaintiff has failed to discharge his burden of proving transactions by which the said shares were claimed to have been sold in favour of the defendant no.2. However, the positive case of the plaintiff was that he remained the owner of the said shares. The suit was dismissed. The order of dismissal was affirmed on 4th January, 2023 in F.A.T. No. 472 of 2011. The review petition was also dismissed being R.V.W. 27 of 2023 on 17th March, 2023. The Special Leave Petition being Special Leave Petition (Civil) Diary No. 25621/2023 against the appellate order and the review order was dismissed on 11th August, 2023. Thereafter, the plaintiff has filed a suit in the year 2024 claiming that the plaintiff is the owner of the said shares. The defendant has taken the plea of *res judicata*. The learned Single Judge refused to accept the plea of *res judicata*, however, refused to pass an ad interim order on the ground that the plaintiff has failed to make out a *prima facie* case. The learned Single Judge has recorded that the cause of action as pleaded in the present suit could not be said to be correct as the defendant no.2 has filed a written statement in a previous suit and categorically has taken the stand that the shares are standing in the name of the person other than the plaintiff and the defendant no.2 has disclosed the name of the person in whose name the shares were standing and the name of the persons who have lodged the shares have also been enclosed by way of exhibits but the plaintiff did not take any steps for impleading them as a party in the said suit.

Prima facie, when the plaintiff is unable to establish the clear title over the shares by reason of his inconsistent pleas with regard to the ownership of shares, it was sufficient to deny an interim order to the plaintiff.

On such consideration, we do not find any reason to interfere with the order passed by the learned Single Judge.

The appeal and the application are dismissed.

However, there shall be no order as to costs.

(SOUMEN SEN, J.)

(BISWAROOP CHOWDHURY, J.)

bp/R.Bhar