

ORDER SHEET

APOT/364/2024
WITH
CS/213/2024
IA NO.GA/1/2024

IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
ORIGINAL SIDE

WELLMAN WACOMA LTD.
VERSUS
MD RIYAZ KHAN AND ORS

BEFORE:
The Hon'ble JUSTICE SOUMEN SEN
AND
The Hon'ble JUSTICE AJAY KUMAR GUPTA
Date : 12th November, 2024

Appearance:

Mr. Ratnanko Banerji, Sr. Adv.
Mr. Abhrotosh Majumder, Sr. Adv.
Mr. Debdoot Mukherjee, Adv.
Mr. Aditya Kanodia, Adv.
Mr. Biswaroop Ghosh, Adv.
Ms. Shreya Trivedi, Adv.
Mr. Rudrajit Sarkar, Adv.
...for the appellant

Mr. Abhrajit Mitra, Sr. Adv.
Mr. Sarvapriya Mukherjee, Adv.
Mr. Satadeep Bhattacharya, Adv.
Mr. Arnab Sardar, Adv.
...for respondent nos. 1 & 2

Mr. Jayanta Mitra, Sr. Adv.
Mr. Jishnu Chowdhury, Adv.
Mr. Arif Ali, Adv.
Mr. Aritra Basu, Adv.
Mr. Varun Kothari, Adv.
Mr. Souradeep Banerjee, Adv.
Mr. A. Agarwalla, Adv.
Ms. D. Mukherji, Adv.
Ms. P. Garain, Adv.
...for defendant no. 25

Mr. Surajit Nath Mitra, Sr. Adv.
Mr. Nirmalya Dasgupta, Adv.

*Mr. Jaydeb Ghorai, Adv.
Mr. Suman Chatterjee, Adv.
Mr. Diptesh Ghorai, Adv.
...for Agarpara Company Ltd.*

*Mr. Farhan Ghaffar, Adv.
Mr. Ankit Chaturbedy, Adv.
Ms. Shreya Srivastava, Adv.
...for respondent no.17.*

The Court: Affidavit-of-service filed in Court is taken on record.

We have heard Mr. Ratnanko Banerji, learned Senior Counsel appearing on behalf of the appellant and Mr. Abhrajit Mitra, learned Senior Counsel on behalf of the respondent nos. 1 and 2. Mr. Banerji has contended on behalf of defendant no.5, the present appellant, that one Agarpara Jute Mills Limited is the owner and landlord of several premises and the present appellant is a tenant under the Agarpara Jute Mills Limited of a godown being No.BLB/Part II situated at 88F, B. T. Road, Kolkata-700058.

On 5th November, 2024 we have taken note of said submission and also the submission made on behalf of Mr. Mitra. Mr. Banerjee has referred to the decision of the Hon'ble Division Bench in the ***Bengal Club Limited Vs. Susanta Kumar Chowdhury***, reported in **2002 SCC Online Cal 376: AIR 2003 Cal 96** to contend that if a party obtains an ex parte interim order of injunction on the basis of pleadings which do not disclose the state of facts with sufficient clarity it is open for the aggrieved party to point out before the appellate court that the plaintiff suppressed facts before the trial court. We have already restrained the Special Officer to collect rent from the present appellant although surprisingly the landlord what is likely to be affected has

not preferred an appeal. It is contended by Mr. S. N. Mitra, learned Senior Counsel appearing on behalf of respondent no.25 that the order impugned is required to be vacated forthwith as it was obtained by suppression of material facts and he can support the defendant no.5 in its appeal, the present appellant, without preferring an independent appeal in absence of any explanation offered in not preferring an appeal, we are of the view that the proper remedy for the parties would be under Order 39 Rule 4 of the Code of Civil Procedure. At this ad interim stage, our enquiry is confined as to whether on the basis of the materials available on record the learned Single Judge could have exercised discretion ex parte against the present appellant. Nothing had prevented the other disgruntled respondents to apply for vacating of the interim order or preferring an appeal.

Mr. Jayanta Mitra, learned Senior Counsel submits that he has been instructed to appear on behalf of defendant no.25. The defendant no.25 had filed a caveat. The said defendant is supporting the present appellant. The right to represent defendant no.25 is itself a dispute to be resolved in the interlocutory proceeding. It seems excepting the present appellant no one has argued in favour of the appellant. The nature of the order as it stands is with regard to the collection of the rental incomes. The plaintiff is not the immediate beneficiary of the said amount. However, having regard to the fact that Mr. Banerji has raised in issue with regard to the locus of the plaintiff to claim any rent and other charges in view of a subsisting agreement with Agarpara Jute Mills and in the event the appellant is compelled to pay to the

Special Officer it may result in a breach of the existing contract with Agarpara, the order directing the appellant to pay the Special Officer shall remain stayed till the disposal of the injunction application. Any other direction upon the Special Officer in relation to the appellant shall also remain stayed till such issue is decided at the interim or final stage of the injunction application as the learned Single Judge may deem fit and proper.

In view of the submission made on behalf of the appellant that Agarpara Jute Mills Limited is its landlord which is being disputed by the plaintiff any payment if paid in the meantime to the said Jute Mills shall be at the risk and peril of the appellant. Any such payment shall not create any equity in favour of the present appellant in the pending proceeding. All issues raised in the appeal can be raised before the learned Single Judge either in the form of an application for vacating or affidavit as the case may be.

In view of the nature of the order, we are of the view that the matter ought to have been made returnable immediately after reopening as it appears that few parties may have been prejudiced by the order passed ex parte. Under such circumstances, we make this matter returnable before the learned Single Judge on 20th November, 2024, subject to the convenience of the learned Single Judge.

We make it clear that we have not gone to the merits of the matter. All points are left open to be decided by the learned Single Judge.

We make it clear that the learned Single Judge shall decide the injunction application on merits without being influenced by the observations made hereinabove.

The appeal and application are disposed of.

(SOUMEN SEN, J.)

(AJAY KUMAR GUPTA, J.)

mg/s. Pal