

(2013) 01 CAL CK 0027

In the Calcutta High Court

Case No : F.M.A.T. No. 43 of 2013, C.A.N. 348 of 2013 and F.M.A.T. No. 61 of 2013, C.A.N. 476 of 2013

Mr. Shiv Shankar Banerjee, Mr. Arik Banerjee and Mr. Dipak Kumar Mukhopadhyay APPELLANT

Vs

Mr. Aniruddha Chatterjee, Mr. Rahul Karmakar and Mr. Ashoke Bhowmick RESPONDENT

Date of Decision : 18-01-2013

Acts Referred:

Citation : (2013) 01 CAL CK 0027

Hon'ble Judges : Subhro Kamal Mukherjee, J;Asim Kumar Mondal, J

Bench : Division Bench

Judgement

1. These two appeals are filed against Order No. 2 dated December 11, 2012 and Order No. 3 dated January 10, 2013 respectively, both passed by Mr. Sandip Kumar Roy Chowdhury, learned Judge, Seventh Bench, City Civil Court at Calcutta, in Title Suit no. 1770 of 2012. The defendant No. 2 is the appellant before us.

2. Title Suit No. 1770 of 2012 was instituted, inter alia, for a declaration that the defendant No. 2 was not entitled to invoke the bank guarantee dated May 19, 2008, which has been valid till February 19, 2013.

3. In the said suit, the bank is the defendant no. 1 and the State Trading Corporation of India is the defendant No. 2.

4. In such a suit, the plaintiff moved an application for temporary injunction. The learned trial judge by the order dated December 11, 2012 passed an ex-parte ad-interim order of injunction directing the defendants/respondents to maintain status quo regarding the bank guarantee till January 10, 2013.

5. Although we feel that the appeal against order dated December 11, 2012 has become infructuous due to efflux of time, we record dissatisfaction in the manner the order was passed.

6. The learned trial judge did not record the reasons for his opinion as to how the object of granting the injunction would be defeated by delay unless an ex-parte ad-interim order of injunction was passed.

7. More peculiar things have happened. The defendant Nos. 1 and 2 appeared in the suit by filing their respective vakalatnamas on January 10, 2013. On their prayers, the learned trial judge granted them time for filing written statements and written objections. The learned trial judge fixed March 4, 2013 for filing such written statements and written objections. The plaintiff was absent on calls. Still, the learned trial judge extended the ad-interim order of injunction till March 4, 2013.

8. There was no prayer for extension of the interim order as the plaintiff was absent.

9. The procedure adopted by the learned trial judge was not correct.

10. Therefore, the order dated January 10, 2013 is set aside.

11. We request the learned trial judge to dispose of the application for temporary injunction as expeditiously as possible.

12. As prayed for by the learned advocates appearing for the defendants, we prepone the date of filing the written objections to the application for temporary injunction and direct the defendants to file their written objections within a week from this date; reply, if any, by one week thereafter.

13. Mr. Aniruddha Chatterjee, learned advocate appearing for the plaintiff/respondent No. 1, prays for leave to approach the trial court for renewing the prayer for ad-interim order of injunction. It is for the plaintiff to approach the trial court and it is for the trial court to consider the prayer for ad-interim order of injunction, if any.

14. If the plaintiff approaches the trial court for ad-interim order the learned trial judge shall consider such prayer in presence of the learned advocates appearing for the parties.

15. We record that we have not gone into the merits of the claim and the counterclaim of the parties involved in the suit or in the applications for injunction and all the issues in the suit and all the points for consideration in the application for temporary injunction are kept open.

16. Both the appeals and the connected applications stand disposed of, as above. We make no order as to costs.