

(2022) 09 CAL CK 0005
In the Calcutta High Court
Case No : CO. No. 1997 Of 2022

M/S Rama Constructions

APPELLANT

Vs

Astabandhav Co-Operative Housing Society Limited & Ors.

RESPONDENT

Date of Decision : 01-09-2022

Acts Referred:

Citation : (2022) 09 CAL CK 0005

Hon'ble Judges : Subhasis Dasgupta, J

Bench : Single Bench

Advocate : Gopal Ghosh, Subrata Ghosh, Rajkrishna Mondal. Sounak Bhattacharya

Judgement

Subhasis Dasgupta, J

This revisional application is against reversal of an order, passed by 1st Lower Appellate Court. Trial Court in Title Suit No.620 of 2021 granted ad interim order of injunction on the prayer of petitioner/plaintiff. The opposite parties/defendants being dissatisfied with the order granting ad interim injunction, preferred a Misc. Appeal No. 120 of 2021, before the learned Additional District and Sessions Judge, 7th Court, Barasat. First Lower Appellate Court in referred Misc. Appeal vacated the order of ad interim injunction upon reversing the order of Trial Court.

Mr. Gopal Ghosh, learned advocate appearing for the petitioner submitted that Appellate Court in spite of having noted a fact revealing 80% (eighty per cent) completion of construction work, for the payment being made to the tune of rupees 1 Crore 17 Lakhs, as part payment for construction work by opposite parties/defendants, the ad interim injunction granted by Trial Court ought not to have been vacated.

Mr. Ghosh contended that the delay caused in making completion of the construction work within the targeted period was not solely attributable to the conduct of the petitioner, but it was due to the delay caused in the payment of money by opposite parties/defendants, as agreed upon in the developing

agreement, dated 08.06.2016.

Reliance was placed by Mr. Ghosh, on a decision reported in AIR 1988 Calcutta 25 delivered in the case of Sm. Muktakesi Dawn & Ors. Vs. Haripada Mazumdar & Anr., that the Trial Court having recorded sufficient reasons, while granting the order of ad interim injunction, should not have been altered by the court in appeal.

More so, the discretion vested to the Trial Court, being lawfully exercised would not have been disturbed by the First Lower Appellate Court, Mr. Ghosh argued.

Mr. Sounak Bhattacharya, learned advocate appearing for the opposite parties/defendants submitted that developing agreement had been executed on 8th June, 2016, with a condition that the construction work would be completed within 18 months.

Mr. Bhattacharya submitted that petitioner having failed to complete the construction work within the stipulated period, as per agreement, and in spite of the payment having made in excess than the actual work performed, the Appellate Court found every reasons to vacate the ad interim order of injunction granted by the Trial Court, in exercise of his Appellate authority.

Supporting the order of court below, Mr. Bhattacharya submitted that while vacating the ad interim injunction, the Appellate Court had also tested the case in terms of the principles, applicable for granting injunction.

The dispute raised in this case by petitioner, according to opposite party, is nothing, but for settlement of dues, for construction work performed by the petitioner.

Mr. Bhattacharya disputed with the applicability of the decision referred by the petitioner, submitting that such decision was distinguishable on facts.

Having considered the submissions of both sides, it appears that though the construction was raised 80% (eighty per cent) of the proposed construction, but there is a strong dispute pertaining to the settlement of dues with respect to the construction work performed. The time period mentioned in the developing agreement in this case could not be regarded to. This is not a case of specific performance of a contract. It is a suit, basically for declaration, injunction and damages.

Trial Court granted ad interim injunction in absence of the opposite parties. The court in appeal, however, considered the case from a broad perspective in context with the parameters, giving a hearing to both sides, while deciding the legality of an ad interim order of injunction granted by the Trial Court. Recording of reasons, while granting ad interim order of injunction, being subject to the principles of injunction, would not alone be determinative for the grant of injunction. The decision, cited by the petitioner, as such would not be applicable over the facts and circumstances of this case, being distinguishable on facts.

The dispute, as it stands between the parties, is found rested for the delay being caused in concluding the construction work together with settlement of dues between the parties, in respect of the construction work already performed.

The injunction application has not yet been disposed of by the court below. In a situation like this, this court is of the view that the decision given by the Appellate Court, being supported by reasons, would go un-interfered with, because there is no error manifest, or apparent on the face of record to reveal that there has been grave injustice and gross failure of justice occurred thereby.

The impugned order does not call for any interference.

Learned Civil Judge (Junior Division), 1st Court, Barasat in T.S. 620 of 2021 is, however, requested to ensure expeditious disposal of pending injunction application, providing sufficient opportunity of hearing to either of the parties to this case, but without granting any unnecessary adjournment, unless it is extremely unavoidable.

Liberty is granted to file written objection against injunction application, within three (3) weeks from the date of communication of this order, if not already filed.

Parties are directed to make communication of this order to the learned court below.

With these observation/direction, the revisional application stands disposed of.

Urgent photostat certified copy of this order, if applied for, be given to the parties, upon compliance of all formalities, on priority basis.