

Chowringhee Residency Pvt Ltd Vs. Itc Ltd

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Court : Kolkata

Decided On : Jun-05-2014

Judge : Indira Banerjee

Appellant : Chowringhee Residency Pvt Ltd

Respondent : itc Ltd

Judgement :

ORDER

SHEET GA No.1653 of 2014 With APOT No.280 of 2014 IN THE HIGH COURT AT CALCUTTA Civil Appellate Jurisdiction ORIGINAL SIDE CHOWRINGHEE RESIDENCY PVT LTD Versus ITC LTD BEFORE: The Hon'ble JUSTICE INDIRA BANERJEE The Hon'ble JUSTICE ARIJIT BANERJEE Date : 5th June, 2014.

Appearance: Mr.Sudipta Sarkar, Sr.Adv.Mr.S.N.Mitra, Sr.Adv.Mr.S.N.Mookherjee, Sr.Adv.Mr.A.Mitra, Adv.Mr.Arindam Banerjee, Adv.Mr.J.Chowdhury, Adv.Mr.B.Kumar, Adv.Mr.Soumavo Ghose, Adv.Mr.Satadeep Bhattacharya, Adv.For the Appellant.

Mr.Ahin Chowdhury, Sr.Adv.Mr.Samit Talukder, Sr.Adv.Mr.Sakya Sen, Adv.Mr.Hasnuhana Chakraborty, Adv.Mr.Sudeshna Bagchi, Adv.Mr.D.Dutta, Adv.For the Respondent.

The Court :- This appeal is against an order dated 8th May, 2014 whereby the learned Single Judge has, inter alia, directed the Advocate-on-Record of the defendant to ensure that construction of the building in question does not progress at such a pace or to such an extent so as to make consideration of the interim application infructuous.

The plaintiff/respondent filed a suit against the defendant/appellant seeking, inter alia, an order of injunction restraining the defendant/appellant from constructing a sixty storied building on the suit property.

In the said suit an interlocutory application was filed seeking orders restraining the defendant/appellant from carrying on construction.

On the said application being moved an order dated 19th August, 2013 was passed which is set out hereinbelow for convenience: Directions are given for filing affidavits.

Affidavit-in-opposition be filed within a fortnight; reply, if any, be filed within a week thereafter.

Matter to appear in the list four week hence.

Any steps taken by the respondent will abide by the result of this application.

The defendant/appellant filed an application for rejection of plaint under Order 7 Rule 11 of the Code of Civil Procedure.

We are given to understand that the said application is presently being heard.

The interlocutory application for interim injunction is also pending.

It appears that in course of hearing of the aforesaid application, the plaintiff petitioner prayed for listing and hearing of the interlocutory application, so that further interim orders restraining the appellants from proceeding with the construction could be passed, contending that the suit would otherwise be rendered infructuous.

On the other hand, the appellants insisted that the application under Order 7 Rule 11 should be disposed of.

Some adjournments had also to be granted to accommodate counsel.

The Court therefore directed the Advocate-on-Record for the defendant to ensure that construction did not progress at such a pace or to such an extent so as to make the interim application infructuous.

The aforesaid direction is, as submitted by Mr.Sarkar, virtually impossible to implement either by the Advocate-on-Record of the appellant, or, for that matter, by the appellant/defendant.

Furthermore, interest of the plaintiff/respondent was sufficiently protected by the interim order dated 19th August, 2013.

The defendant/appellant has been carrying on construction at its own risk of consequences, in the event the suit/interlocutory application succeeds.

The order under appeal is set aside.

It is expected that the application under Order 7 Rule 11 as also the interlocutory application shall be heard and disposed of expeditiously.

All formalities are dispensed with.

The appeal shall stand disposed of.

(INDIRA BANERJEE, J.) (ARIJIT BANERJEE, J.) cs, A.R.(CR).

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