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Court : Kolkata Appellate

Decided On : Jan-04-2011

Judge : Prasenjit Mandal, J.

Appeal No. : C.O. No. 3943 of 2010

Appellant : Eih Limited.

Respondent : Jay Engineering Works Limited.

Advocate for Def. : Mr. Abhrajit Mitra,; Mr. Anirban Ray,; Mr. Santosh Kr. Roy;
Ms. S. Dey,; Ms. Nasreen Kauser, Advs

Advocate for Pet/Ap. : Mr. Probal Mukherjee,; Mr. Bhaskar Mukherjee, Advs

Judgement :

1. This application is at the instance of the plaintiff and is directed against the order no.85 dated December 13, 2010 passed by the learned Judge, City Civil Court, Calcutta in Title Suit No.61 of 2005 thereby allowing the application dated June 16, 2010 filed by the plaintiff and the application dated October 6, 2010 filed by the defendant.

2. The plaintiff/petitioner instituted a Title Suit No.61 of 2005 praying for permanent injunction and other consequential reliefs. In that suit, the defendant appeared. It is carrying on a business in the shop room in suit as a tenant under the plaintiff. The defendant / opposite party wanted to repair/renovate the said shop room and for that reason, the plaintiff filed the suit for permanent injunction and other

consequential reliefs. In that suit, the Honble High Court, Calcutta passed an order in F.M.A.T. No.505 of 2005 thereby directing that an inspection of the said shop room should be done by a commissioner. He should submit report thereafter. The defendant was at liberty to make construction. Then, after completion of the repairing/renovation work, another inspection was to be held by the same commissioner and he should submit report. Thereafter, the plaintiff and the defendant filed an application with regard to the repair and both the petitions were disposed of by the impugned order. Being aggrieved, the plaintiff has come up with this application.

3. Now, the question is whether the impugned order should be sustained.

4. Upon hearing the learned counsel for the parties and on going through the materials on record, I find that the plaintiff /petitioner filed the suit for permanent injunction and other consequential relief against the defendant/tenant. In that suit, the question of repair/renovation of the premises in suit arose because the suit shop room was required for urgent repair/renovation for the business purpose. The matter went to the Honble High Court and by an order dated March 9, 2005 in F.M.A.T. No.505 of 2005, a Honble Division Bench of this Court made detailed observations what type of repairing/renovation work was to be done and what was the mode of doing the work. According to that order of the Division Bench, the learned Trial Judge was to appoint an advocate commissioner for the purpose of local inspection. After such local inspection, the commissioner was to submit his report before the Court. Thereafter, the defendant would start renovation works. After completion of the repairing/renovation work, the same advocate commissioner would further submit his report before the Court. The matter came again before the Honble Court and by an order dated September 21, 2010, this Bench directed that if the defendant intended to repair the premises in suit, he had to comply with such directions as observed by the Honble Division Bench in the F.M.A.T. No.505 of 2005 and to take appropriate measures accordingly. Otherwise, the question of repair could not be granted. The impugned order challenged therein could not be sustained accordingly.

5. According to the above directions by this Honble Court, the learned Trial Judge appointed an advocate commissioner and directed him to go to the locale and to inspect and then to submit his report by December 20, 2010. The learned Trial Judge also observed that after submission of the report by the learned advocate commissioner, the defendant could start his renovation work on the basis of the report of the learned commissioner and after completion of the renovation work, the selfsame advocate commissioner would further submit his report before the Court as per directions of the Honble High Court. The learned Trial Judge also observed that the basis of the inspection would be as per application filed by the defendant under Section 151 of the Code of Civil Procedure.

6. Thus, I find that the order impugned has been passed in consonance with the orders of the Honble High Court at Calcutta and so there is no scope of interference with the order impugned. Mr. Mukherjee submitted that when a report was to be filed by the commissioner, an opportunity should have been given to the plaintiff to file a written objection against the report of the commissioner. In this regard, I hold that everything has been decided earlier as per order of the Honble Division Bench dated March 9, 2010 in F.M.A.T. No.505 of 2005. So, there is little scope to file any objection against the report of the commissioner. Such check of double of inspection has been provided to see that scope of the renovation work does not exceed the points to be inspected as decided earlier. So, the question of filing objection against the report of the commissioner does not arise. I am of the view that there is no scope of interference with the impugned order. So, this application is dismissed.

7. Considering the circumstances, there will be no order as to costs.

8. Urgent xerox certified copy of this order, if applied for, be supplied to the learned Advocates for the parties on their usual undertaking.