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AYAN CHATTERJEE

v.

FUTURE TECHNOLOGY FOUNDATION INC. & ORS.

(Civil Appeal No. 5655 of 2007)

APRIL 18, 2017

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[R. K. AGRAWAL AND ABILAY MANOHAR SAPRE, JJ.]

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Code of Civil Procedure, 1908 – Or. 39, rr. 1 & 2 – Interlocutory Orders/Proceedings – Nature and effect of – Civil suit by respondent no.1-plaintiff for declaration and permanent injunction against appellant-defendant – Temporary injunction also sought – While deciding the temporary injunction application, trial court inter alia directed parties to maintain status-quo – High Court while deciding appeals against the interlocutory order, invoked powers u/s. 340, CrPC and directed lodging of a complaint against the appellant for having allegedly fabricated some documents filed in the suit – On appeal, held: The findings recorded while deciding interlocutory proceedings such as the one in present case (injunction proceedings) are prima facie in nature and their effect remains confined to the disposal of interlocutory proceedings only – Such findings do not come in the way of disposal of the civil suit on merits which is decided on the basis of the pleadings and evidence in the suit – Since the parties are yet to adduce evidence on merits, it is in the interest of all the parties that they adduce evidence so that the civil suit out of which the present appeal arises itself is disposed of, on merits – Depending upon the outcome of the suit, appropriate directions can always be given, including the one given by High Court – Code of Criminal Procedure, 1973 – s. 340 – Penal Code, 1860 – s.196.

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Disposing of the appeal, the Court

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HELD: 1.1 The findings recorded while deciding interlocutory proceedings such as the one in this case (injunction proceedings) are prima facie in nature and their effect remains confined to the disposal of the interlocutory proceedings only. Such findings do not, in any manner, affect and come in the way of disposal of the Civil Suit on merits which is decided on the basis of the pleadings and evidence adduced by the parties in the suit. [Para 16][542-D-E]

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1.2 The parties are yet to adduce the evidence on merits in support of their respective stand taken in the pleadings in the civil suit, thus, it would be in the interest of all the parties concerned, that they adduce evidence so that the Trial Court is able to decide the civil suit on merits in accordance with law. The Trial Court would decide the suit uninfluenced by any of the findings recorded and observations made by the Trial Court and also by the High Court in the impugned order.[Para 17] [542-E-F]

1.3 Depending upon the outcome of the suit, appropriate directions, as the case may be, can always be given including the one given by the High Court, if occasion so arises and if need be. [Para 18] [542-G]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 5655 of 2007.

From the Judgment and Order dated 21.07.2005 of the High Court at Calcutta in F. M. A. T. Nos. 1335 of 2005.

Abhijit Sengupta, Adv. for the Appellant.

D. N. Ray, Lokesh K. Choudhary, Mrs. Sumita Ray, Adv. for the Respondents.

The Judgment of the Court was delivered by

ABHAY MANOILAR SAPRE, J. 1. This appeal is filed by defendant No.2 against the final judgment and order dated 21.07.2005 passed by the High Court of Calcutta in F.M.A.T. No. 1335 of 2005 whereby the High Court dismissed the appeal filed by the appellant herein against the order dated 06.04.2005 passed by the Civil Judge(Sr.Div.), IXth Court at Alipore in T.S. No.3 of 2005.

2. We need not burden the order by setting out the facts in detail except to the extent necessary to appreciate the short controversy involved in the appeal.

3. The appellant is defendant No.2 whereas respondent No. 1 is the plaintiff, respondent No. 2 is defendant No. 1 and respondent No. 3 is defendant No. 3 in the Civil Suit out of which this appeal arises.

4. Respondent No. 1 has filed a Civil Suit being Title Suit No. 3 of 2005 in the Court of IXth Civil Judge (Senior Division), Alipore against

A the appellant and respondent Nos. 2 and 3. The suit is for a declaration
that respondent No. 1 was and continues to be a tenant under respondent
No. 2 in relation to the suit property. Respondent No. 1 has also prayed
for grant of permanent injunction restraining respondent No. 2 and the
appellant, their servants and the agents from interfering with peaceful
possession of respondent No. 1 in the suit property. A further prayer is
B made that the appellant be also restrained from operating the Bank
Account of respondent No. 1 bearing current account No.0029-136274-
050 with respondent No. 3.

5. During the pendency of the suit, respondent No. 1, in order to
protect their rights, which are subject matter of the civil suit, filed an
C application under Order 39 Rules 1 and 2 read with Section 151 of the
Code of Civil Procedure, 1908(hereinafter referred to as “the Code”)
and sought temporary injunction against the defendants (appellant,
respondent Nos. 2 and 3) restraining them from interfering in respondent
No. 1’s possession over the suit property etc.

D 6. Respondent No. 2 and the appellant, who were the contesting
defendant Nos. 1 and 2 respectively filed their reply and opposed the
prayer for grant of temporary injunction made by respondent No.1.

7. The Trial Court, by order dated 6.4.2005, while disposing of
the injunction application directed the parties to maintain status-quo over
E the suit property. It recorded a finding that the plaintiff is *prima facie*
found to be in possession of the suit property and that defendant No. 2
could not prove his possession *prima facie* over the suit property.

8. Felt aggrieved, defendant Nos. 1 and 2 filed separate Misc.
Appeals before the High Court whereas the plaintiff also filed Misc.
F Appeal against the aforesaid order of the Trial Court. The High Court,
by impugned judgment, dismissed the appeals filed by defendant Nos. 1
and 2 whereas allowed in part the appeal filed by the plaintiff and
accordingly modified the order of the Trial Court to the effect that the
special officer be appointed to take possession of the suit property which
would remain in his possession till the disposal of the Suit. It was also
G directed that this direction would be subject to the result of the Civil Suit.

9. While disposing of the three appeals, the High Court also
directed the Trial Court to decide the Civil Suit on or before 31.12.2005
on merits. The High Court then also invoked powers under Section 340
of the Code of Criminal Procedure, 1973 (in short, “Cr.P.C.) and directed
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the Registrar General of the High Court to lodge a complaint against the appellant and respondent No. 2 for their prosecution for having allegedly committed offence punishable under Section 196 of the Indian Penal Code, 1860 by fabricating some documents filed by them in the suit to secure the orders in their favour. The directions read as under:

“After careful scrutiny of the Xerox copies of the two agreements and the receipt granted by defendant No.1 in favour of the defendant no.2 for Rs.72000/-, we are prima facie convinced that those are fabricated ones and were relied upon by the defendant nos.1 and 2 with the object of defrauding the Court with an eye to obtain favourable order in their favour and as such, they have prima facie committed an offence under Section 196 of the Indian Penal Code; it is, therefore, expedient in the interest of justice that an enquiry should be made to ascertain whether those documents included in the paper book between pages 107 and 123 are really fabricated ones. We accordingly in exercise of our power conferred under Section 340 of the Code of Criminal Procedure direct the learned Registrar General of this Court to lodge a complaint before the appropriate court against the defendant nos. 1 and 2 alleging offence under Section 196 of the Indian Penal Code on the aforesaid facts.”

10. Felt aggrieved, defendant No. 2 has filed this appeal by way of special leave before this Court.

11. On 05.12.2005, this Court issued notice to the respondents only *qua* direction given by the High Court to the Registrar General of the High Court to lodge a complaint under Section 340 of the Cr.P.C. During the pendency of the S.L.P., this Court stayed the implementation of the impugned directions. In other words, this Court dismissed the special leave petition insofar as it relates to the main controversy decided by the High Court in relation to the grant of injunction and confined this appeal to examine the legality and correctness of the impugned directions quoted supra.

12. Even on second call, none appeared for the appellant. Mr. D.N.Ray appeared for respondent No. 1.

13. In the interest of justice, we permitted the appellant to submit

A the written submissions within three days. The appellant has filed the written submissions.

14. Having perused the record of the case, the written submissions filed by the appellant and on hearing the submissions of learned counsel for respondent No. 1, we are inclined to dispose of the appeal with observations made *infra*.

15. In our considered opinion, having regard to the nature of controversy involved in the pending Civil Suit and the one which has traveled to this Court out of interlocutory proceedings, it would be in the interest of all the parties that the Civil Suit out of which this appeal arises itself is disposed of on its merits in accordance with law uninfluenced by any of the observations made by the Trial Court and the High Court while deciding the injunction application which is the subject matter of this appeal.

16. In our considered view, even otherwise, the findings recorded while deciding interlocutory proceedings such as the one in this case (injunction proceedings) are *prima facie* in nature and their effect remains confined to the disposal of the interlocutory proceedings only. Such findings, in our view, do not, in any manner, affect and come in the way of disposal of the Civil Suit on merits which is decided on the basis of the pleadings and evidence adduced by the parties in the suit.

17. It is for this reason, we are of the view that since the parties are yet to adduce the evidence on merits in support of their respective stand taken in the pleadings in the Civil Suit, it would be in the interest of all the parties concerned, that they adduce evidence so that the Trial Court is able to decide the Civil Suit on merits in accordance with law. Needless to say, the Trial Court would decide the suit uninfluenced by any of the findings recorded and observations made by the Trial Court in its order dated 06.04.2005 and also by the High Court in the impugned order.

18. Depending upon the outcome of the suit, appropriate directions, as the case may be, can always be given including the one given by the High Court, if occasion so arises and if need be. We, therefore, at this stage, refrain from making any observation in the order.

19. Let the Civil Suit be decided by the Trial Court, as directed above, within one year as an outer limit strictly in accordance with law. Till then, the interim order dated 05.12.2005 of this Court would remain

in operation so also the impugned order passed by the High Court which this Court has affirmed in relation to the grant of injunction regarding preservation of suit property. A

20. Parties to appear before the Trial Court on 02.05.2017 and produce the copy of this order to enable the Trial Court to proceed with the trial of the suit. Since none had appeared for the appellant before this Court for prosecuting the appeal, the Trial Court shall issue notice to all the parties (if nobody appears on 02.05.2017 on behalf of the parties) in the suit for their appearance on the date to be fixed by the Trial Court for proceedings further in the trial, as directed above. B

21. In view of foregoing discussion, the appeal stands accordingly disposed of. C

Divya Pandey

Appeal disposed of.