

**Order No.19, Dated 06.2.2024**

Today is fixed for order in respect of the petition under Order XXXIX Rule 1 & 2 read with Sec. 151 of CPC dated 14.11.2022 after conclusion of rival contentions on last occasion and filing of receipt showing payment of cost of RS.300 to defendant by the plaintiff.

Both parties file Haziras separately and both of them already filed their original documents on last occasion.

Accordingly, the record is taken up for passing necessary order.

The facts of the plaintiffs'/ petitioners' case, in a nutshell are that plaintiff is a public limited company registered under Companies Act and mainly deals with manufacturing of cement, steel iron and TMT Bars. That with the intention of expanding its business, plaintiff started purchasing large numbers of plots at Jijalgora and Jamuria and did that rather still continuing. That they already purchased 350 acres of land and apart from that, they have also purchased 7.22 acres of land in plot no. 1743,1753,1754 and 2348 by dint of various deeds of sale being no. 2166 to 2172. That defendant is also a private limited company registered under Companies Act and also has business at village-Dhana PS. Jamuria. That for the purpose of producing article, huge amount of water is required by the Defendant. That river Ajay runs west to east to about 11 km north to the factories of both plaintiff and defendant. That defendant company got a pipeline from river Ajay to their factory in the year 2012/2013 having capacity of 2 Mega Gallon per day and have got permission on installing submersible pump. That they are illegally lifting water through such pump by installing additional number of pumps than they were permitted. That in doing so, the defendant company had illegally tried to dig certain portion of plot no.1754, which belong to the plaintiff and when the staff of plaintiff company protested, they stopped it but threatened the latter with dire consequences. That the defendant is creating cloud over the title of the plaintiff in respect of the suit property and creating all sort of disturbances to the peaceful possession of the plaintiff and proforma defendants. As such the cause of action arose and finding no other alternative, the plaintiff was constrained to file this suit and now praying for temporary injunction against the principal defendant/opposite party, as an intermediary relief vide the instant application dated 14.11.2022.

The principal defendant's/ opposite party's case, in nutshell is that after seeking proper permission from appropriate authority the pipelines were installed and requisite fees of RS. 17,49,000 was also deposited. That the route of the proposed lines does not touch 1743,1753 and 2348 and the concerned plot is 1754, which is a huge one measuring about 8.77 acres and before laying the pipeline, the defendant entered into an agreement for sale dated 07.09.2022 with Aloke Das, one of the recorded owner and after execution of such agreement, possession was delivered in favour of the defendant. He denied each and every allegations stated against him and further averred that the plaintiff filed this suit out of business rivalry. That neither the plaintiff has prima facie case nor the balance of convenience till in his favour. Stating the above he pleaded before this Court for rejecting the injunction petition with cost vide written objection dated 17.03.2023.

Heard Ld Counsels of both sides at length. Perused the petition, W/O and other materials on record along with the documents filed. Considered.

It is well settled that for grant of temporary injunction, three factors have to be satisfied which are prima facie case, balance of convenience and irreparable loss.

**T.S. 647 of 2022**

**CNR WBB08000822-2022**

**contd.....Order No.19, Dated 06.2.2024**

After hearing both the parties and on perusal of materials on record, it appears that the dispute is mostly regarding to suit plot no. 1754 which had not been described with boundaries either in the plaint or in the injunction application and from the LR Plot information it appears that the entire plot is of 9.48 acres and plaintiff' claim is of 8.77 acres. The mention of boundaries becomes more relevant when there is dispute regarding the said plot. The description of the schedule properties are thus vague. Though the principal defendant only filed one notarized agreement for sale in regard to plot no.1754 but one registered deed of sale being no. 5385 of 2023 also came forth, which has to be taken into judicial notice though it is beyond the pleadings, for ascertaining his present status. Notwithstanding to that, the LR Plot information as filed by the plaintiff in respect to Plot no.1754, further reveals that Plot no.1754 had been recorded in the name of the plaintiff under Khatian no.6119 but the same was never been disclosed in the plaint or in the injunction application and the quantum of land so recorded is 5.85 acres. Besides that from LR the plot information, it further appears that Plot no. 1743 has been recorded to the extent of only 98 decimals and 1748 to extent of only 11.42 acres but the plaintiff is praying for injunction over 1.48 acres and 12.23 acres respectively and it is admitted that there are other co-sharers, so the description should have been more definite and specific. Taking cue of the aforesaid discussion, the prima facie case of the plaintiff becomes doubtful rather vague. Inconvenience which is likely to occur from granting the injunction will be greater than that would be likely to acted from withholding it. If the injunction is granted then it will cause irreparable loss and injury to the principal defendant and other co-sharers.

Hence, it is,

**ORDERED**

that the petition under order XXXIX rule-1 & 2 read with section 151 CPC dated 14.11.2022 is considered and allowed on contest without any order as to cost.

The instant petition is thus disposed of.

To **05.03.2024** for framing of issues.

T & C by

Sd/-

Civil Judge (Junior Division) Addl Court

Asansol, Paschim Bardhaman

J.O. WB01333

Sd/-

Civil Judge (Junior Division) Addl Court

Asansol, Paschim Bardhaman

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