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Misc Appeal No. 36 of 2020
Wbsp-01-0021342020
J.O.WB-1277

Order No. 15
Dated: 25.03.2021

Both the appellant and the respondents are present by Advocate's hazira.

The record is taken up for passing necessary order in respect of the petition filed under order 39 rule 4 of CPC by the respondents.

On the earlier occasion, the Ld. Advocates for both the appellants and the respondents were heard at length in respect of the said petition.

Ld. Advocate for the respondents who filed the petitions as referred to above opened his submission by pointing out that the Ld. District Judge vide order dated 10.02.2020 was pleased to pass an order of status quo with a direction upon the parties to the appeal not to disturb the nature, character and possession of the suit property for a period as prescribed in the said order. In the said order as per the Ld. Advocate for the respondents, there was a specific direction upon the appellants to comply with the provisions under order 39 rule 3(a) and 3(b) of CPC. It was further more submitted by the Ld. Advocate for the respondents that even after being bestowed with the order of status quo, the appellants did not take any endeavour to comply with the provisions of order 39 rule 3(a) of CPC by way of serving the copy of the injunction application along with the copy of the plaint together with the connected documents.

The Ld. Advocate for the respondents ventilated his argument by submitting that due to the non compliance of the order of the Ld. Court in respect of service of copies of the

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petitions as herein above mentioned, the respondents have been compelled to file a petition by invoking the provisions of order 39 rule 3(a) of CPC praying for necessary order from the Ld. Court. The Ld. Advocate for the respondents also submitted that a petition has been filed from the end of the respondents under order 39 rule 4 of CPC wherein the respondents have prayed for the relief of the non extension of the interim order of status quo as passed earlier on account of the non compliance of the provisions of order 39 rule 3(a) of CPC by the appellants. Ld. Advocate for the respondents while winding up his submissions in respect of the petitions filed under order 39 rule 4 of CPC submitted that the statute is explicitly clear on the mandate that if the provisions of order 39 rule 3(a) and 3(b) of CPC are not complied by the party in whose favour an interim order of injunction is passed then the Court shall be free to grant the relief of modifying or varying the interim order thereby granting the necessary relief to the party being aggrieved with such an interim order. On the basis of this submissions, the Ld. Advocate for the respondents has prayed for the relief of non extension of the interim order passed earlier as per the mandate inscribed in order 39 rule 4 of CPC.

The Ld. Advocate for the appellants opened his argument by drawing the attention of the Court that under no circumstance it can be construed that the appellants did not comply with the provisions of order 39 rule 3(a) of CPC in view of the fact that pursuant to the order of status quo, the appellants served the copies of the application of injunction the Memo of Appeal with all connected documents to the

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respondents and in that respect an affidavit of compliance has been brought on record by the appellants in this case. On perusal of the said affidavit together with the postal receipts, in the words of the Ld. Advocate for the appellants, it will become crystal clear that the appellants complied with mandate of service as enumerated in provisions of order 39 rule 3(a) and 3(b) of CPC and such compliance entails the appellants to enjoy the interim order passed earlier by getting it extended from time to time. It was further more submitted by the Ld. Advocate for the appellants that on an earlier occasion the appellants have already served the copy of the plaint to the Ld. Advocate for the respondent no. 1 and 2 together with the annexed documents and the said service was acknowledged by the Ld. Advocate for the respondent no. 1 and 2. So, under no logical parlance as per the Ld. Advocate for the appellants it can be inferred that the service of the copy of the plaint and the other relevant documents including the Memo of Appeal and the application for injunction has not taken place thereby occasioning a ground for this Court to opine that the appellants failed to discharge their statutory obligation of service as coined in the provisions of order 39 rule 3(a) and 3(b) of CPC.

In the light of the aforesaid submissions the Ld. Advocate for the appellants have prayed for dismissal of the application filed by the respondents under order 39 rule 4 of CPC and it has been further argued by the Ld. Advocate for the appellants that under no reasonable and logical justification it can be lawfully construed that the appellants are not entitled to the enjoyment of the interim order due to their failure to follow the statutory

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mandate of the provisions as referred to above.

Before I proceed further with my discussion on the points for consideration while adjudicating the petition filed under order 39 rule 4 of CPC, it is essential on my part to take a look at the interim order of status quo passed earlier in this appeal. The said order prescribes a direction upon the appellants to comply with the provisions of order 39 rule 3(a) and 3(b) of CPC. On going through the contents of the affidavit of compliance filed from the side of the appellants, I find that pursuant to the said order the appellants served copies of the injunction application, the Memo of Appeal together with all connected documents upon the respondents by way of the postal means of service and the said service was duly confirmed by the Ld. Advocate for the respondents. The bone of contention between the appellants and the respondents on the issue of non compliance of the provisions of order 39 rule 3(a) and 3(b) of CPC restricted itself to the non service of the copy of the plaint by the appellants to the respondents. The case record reveals that in the written objection of the respondents filed against the application under order 39 rule 4 of CPC clearly divulges the fact that the copy of the plaint along with all the enclosed documents was served upon the respondents long back before the Ld. Court below when the suit was pending for adjudication and receipt of the copy of the plaint was duly acknowledged by the Ld. Advocate for the respondents. In such a situation, it can not be inferred by a logical interpretation that the respondents did not have in their possession the copy of the plaint nor they were in dark about the contents of the plaint when the

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application for injunction was taken up for hearing by the appellate forum being the Court of the Ld. District Judge, Alipore. As such it can not be construed that there was any non service of the copy of the plaint by the appellants to the respondents to disqualify them from enjoying the benefit of the interim order for their alleged non compliance of the provisions of order 39 rule 3(a) and 3(b) of CPC. In other words, it is not acceptable that the appellants have flouted the provisions of service after being favoured with an order of status quo thereby disentitling them from any further enjoyment of the order of status quo and calling for a variation or rather setting aside of the said order. The respondents to me are bereft of any entitlement of any relief under order 39 rule 4 of CPC.

Accordingly, the petition filed by the respondents under order 39 rule 4 of CPC deserves no consideration and the same is accordingly dismissed.

The petition under order 39 rule 7 of CPC is postponed for hearing to the next date.

The petition for extension of ad interim order passed earlier as filed by the appellants stands allowed and the ad interim order stands extended till the next date.

Fix **06.05.2021** for hearing of the said petition.

Dictated & corrected

S/d PP Chakravorty
Additional District Judge,
3rd Court, Alipore.

S/d PP Chakravorty
Additional District Judge,
3rd Court, Alipore.

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