

Present: Sri Utpal Misra (JO Code:WB00659)
Judge, Commercial Court at Alipore
Title Suit 04/2023
CNR No. WBSP18-000041-2023

Order No. 07

Date: 17.06.2023

In the matter of:

Suit for recovery of possession and mesne profit valued at Rs. 171,80,41,276/- and for injunction at Rs. 100/-.

AND

In the matter of:

Mani Square Limited.

Vs.

In the matter of:

Shri Bhabani Kumar and 05 Ors.

Order

Today is fixed for filing objection to the I.A. No. 05 of 2023 on behalf of the Plaintiff and also for filing objection on behalf of the Plaintiff to the application under Order XXXIX Rule 4 of the CPC as filed by the Defendants and also for filing objection on behalf of the Defendants to the application being I.A. No. 06 of 2023.

Both sides file their respective haziras.

Plaintiff files affidavit in opposition to the application filed by the Defendants under Order VII Rule 11 of CPC being I.A. No. 05 of 2023. Copy served to other sides.

Defendants file supplementary affidavit to the application being I.A. No. 05 of 2023. Copy served to other side.

Plaintiff also files a petition praying for time to file written objection to the application under Order XXXIX Rule 4 being I.A. No. 3 of 2023.

Heard, considered and prayer is allowed.

I.A. No. 06 of 2023

Today is also fixed for filing objection to the apropos application by the Defendants.

Defendants do not file any objection against to I.A. No. 06 of 2023.

In presence of Ld. Counsel appearing for both sides, the instant application is taken up for hearing and also for passing necessary order thereto.

This is an application under Order I Rule 10(2) read with Section 151 of the Code of Civil Procedure, 1908 (hereinafter referred to as CPC) filed by the Plaintiff/Petitioner for amending the cause title of the plaint on the ground as stated therein.

It reveals from the application itself that an *ex parte ad interim* order of injunction was passed against the Defendants *vide* the Order dated 01.04.2023, ordaining that “That, Defendants and/or the men, agents and assigns be restrained to deal with and/or encumber and/or create any third party interest in respect of the suit property as described in the schedule of the plaint and the schedule of the instant injunction application upto the next date i.e. 11.04.2023”

It is further contended by the Plaintiff/Petitioner that the Defendants/Respondents filed an application under Order XXXIX 39 Rule 4 of the CPC praying for vacating the aforesaid ad interim order of injunction dated 1st April, 2023 and on perusal of the said application, the Plaintiff/Petitioner has come to learn for the first time that the Defendant no. 1 had left for her heavenly abode and when the instant matter was taken up on 11th April, 2023 by this Court, Defendants/Respondents no. 2 and 6 filed a death report/intimation of Defendant no. 1's death. Thereafter, the Plaintiff's Advocate on 26th April, 2023 wrote a letter to the Advocate on record of the Defendants to provide them with the death certificate of the Defendant no. 1 and information about the legal heirs of the Defendant no. 1. But, they did not receive any reply thereto from the Defendants' Advocate. So, once again on 2nd May, 2023, the Plaintiff's Advocate sent another letter to the Defendants' Advocate on record and sought for the same information regarding the death of the Defendant no. 1. In reply to the said letter, Ld. Advocate on record of the Defendants wrote a letter dated 4th May, 2023 addressing to the Ld. Advocate on record of the Plaintiff enclosing the death certificate of the Defendant no. 1. More so, on bare perusal of the letter it is purported that only legal heir of the Defendant no. 1 was already impleaded in the instant proceeding, who is nothing but the Defendant no. 2 and as such no formal substitution is required in the facts and circumstances of the instant case.

Hence by instituting the instant application, the Plaintiff/Petitioner has sought for an order for striking off the name of the Defendant no. 1 and to amend the cause title of the plaint accordingly.

Therefore, having heard the submissions of the both sides and considering the facts remained in this instant application, this Court is of the view that the instant application being I.A. No. 06 of 2023 should be allowed for the ends of justice.

Hence, it is ordered that the name of the Defendant no. 1 in the instant suit be struck off from the cause title of the plaint.

D.A. is hereby directed to do needful to amend the cause title as well as suit register accordingly.

Thus, the instant application being I.A. No. 06 of 2023 is hereby disposed of.

I.A. No. 08 of 2023

At this stage, Plaintiff files an application for extension of the ad interim order of injunction dated 1st April, 2023. Cope served to other side.

Heard, considered and prayer is allowed.

Therefore, the ad interim order of injunction is extended till the next date as fixed hereunder. Accordingly, the instant application being I.A. No. 08 of 2023 is hereby disposed of.

Fix the matter on 15.07.2023 at 11:00 a.m. for filing affidavit in reply on behalf of the Defendants to the opposition in connection with the I.A. No. 05 of 2023 and for filing written objection to the application being I.A. No. 03 of 2023 on behalf of the Plaintiff.

To date also for filing opposition on behalf of the Plaintiff to the supplementary affidavit to the application being I.A. No. 05 of 2023.

Both the parties are to act forthwith on the basis of the downloaded copy of this Order.

Dictated and corrected by me

Sd/-

Judge, Commercial Court at Alipore,
For South 24 Parganas, Purba Midnapore,
Paschim Midnapore & Jhargram

Sd/-

Judge, Commercial Court at Alipore,
For South 24 Parganas, Purba Midnapore,
Paschim Midnapore & Jhargram