

OD-2

IN THE HIGH COURT AT CALCUTTA
(Ordinary Original Civil Jurisdiction)
ORIGINAL SIDE

IA No. GA/4/2023

In CS/193/2019

ERA BANTHIA.

Vs.

M/S. SHIVSONS & ORS.

BEFORE :

The Hon'ble JUSTICE KRISHNA RAO

Hearing Concluded On : 28.07.2023

Order On : 07.08.2023

Appearance

Mr. Sabyasachi Choudhury, Adv.

Mr. Debdut Mukherjee, Adv.

Ms. A. Rao, Adv.

Ms. A. Basu, Adv.

Mr. Sanwal Tibrewal, Adv.

...for the plaintiff

Mr. Ishan Saha, Adv.

Mr. Nilay Sengupta, Adv.

Mr. Sujit Banerjee, Adv.

...for the defendant nos. 1 to 3.

Mr. Pratip Mukherjee, Adv.

Mr. Sudip Basu, Adv.

...for the defendant no.4.

ORDER

1. The plaintiff has filed the present application for praying for refund of sum of Rs. 10.00 lakhs along with interest accrued therein.
2. The plaintiff has filed the suit for Specific Performance of Contract. After filing of the suit, the plaintiff has also filed an application for grant of injunction and accordingly by an order dated November 26, 2019, this Court granted injunction in favour of the plaintiff restraining the defendants from creating any third party interest in the suit property.
3. On an application filed by the defendant Nos. 1 to 3 being G.A No. 2521 of 2019, the order of injunction was modified by passing the following order on March 10, 2021:

“16. *In view of the stand of the plaintiff, an opportunity has to be afforded to the plaintiff to regularise the defect in terms of the provisions of the Act of 1899, if there be any. There will be an order of unconditional injunction restraining the defendants from creating third-party rights over and in respect of the immovable property concerned for a period of four weeks from date. The plaintiff shall produce the original agreement dated March 5, 2019, before the Registrar, Original Side of this Court within a week from date whereupon such agreement dated March 5, 2019 shall be impounded. The Registrar, Original Side shall forward the agreement dated March 5, 2019 to the Collector for the purpose of assessment of the stamp duty and fixation of penalty, if any. The 10 Collector shall complete the above exercise within two weeks from the date of receipt of the original agreement dated March 5, 2019.*

17. *The plaintiff shall deposit a sum of Rs. 10 lakhs with the Registrar, Original Side as security for the stamp duty and penalty, if any, payable in respect of the original agreement dated March 5, 2019. Such deposit shall be made within a fortnight from date. In the event of the plaintiff depositing the sum of Rs. 10 lakhs as directed, the injunction granted for four weeks shall continue until further orders of the Court.”*

4. The order dated March 10, 2021 was extended by an order dated 9th April, 2021 and in compliance with the order, the plaintiff had deposited an amount of Rs. 10.00 lakhs as security for the stamp duty and penalty, if any, payable in respect of the original agreement dated March 5, 2019 with the Registrar, Original Side of this Court on March 19, 2021.
5. That as per the demand raised by the Office of the Collector of Stamp Revenue, the plaintiff has deposited an amount of Rs. 12,59,339/- being the stamp duty and penalty on the Agreement dated March 5, 2019 and now the plaintiff prayed for refund of the amount of Rs.10.00 lakhs with interest accrued therein which is deposited as security in terms of the order passed by this Court.
6. On receipt of the amount of Rs. 12,59,339/-, the Office of the Collector Stamp Revenue has impounded the Agreement date March 5, 2019 and thus the security amount of Rs. 10.00 Lakhs deposited by the plaintiff with the Registrar, Original Side of this Court is required to be refunded.

7. In view of the above, the Registrar, Original Side is directed to refund the amount of Rs. 10.00 lakhs to the plaintiff with interest, if any, accrued to the plaintiff within two weeks from the date of receipt of this order on proper identification.
8. **G.A No. 4 of 2023** is thus **disposed of**.

(KRISHNA RAO, J.)

p.d/-