

ORDER SHEET
OD-7

IN THE HIGH COURT AT CALCUTTA
ORDINARY ORIGINAL CIVIL JURISDICTION

IA NO. GA 2 OF 2023
IN
CS 156 OF 2023
IN THE MATTER OF:
AMALGAMATED FUELS LIMITED
VS
NIRANJAN LAL AGARWAL

BEFORE:

The Hon'ble JUSTICE ARINDAM MUKHERJEE

Date: 19th September, 2023.

Appearance:

Mr. Aniruddha Mitra, Adv.
Mr. Soumyadeb Sinha, Adv.
Mr. Rohan Raj, Adv.
Mr. Abhishek Roy, Adv.
For petitioner/ defendant
Mr. Avinash Kankani, Adv.
Mr. Suman Majumder, Adv.
For respondent/plaintiff

The Court :- This is an application by the sole defendant in a suit for recovery of possession for stay of all proceedings under the provisions of Section 10 of the Code of Civil Procedure, 1908 (CPC).

The defendant says that after receiving a notice under Section 106 of the Transfer of Property Act, 1882, the defendant has challenged the validity of such notice by filing a suit for declaration and injunction. The issues in a suit for

declaration and injunction that the tenant should not be evicted without due process of law and a suit for eviction stands in a different footing as held by the Division Bench of this Court in AIR 1982 Cal 41 (Mirta Lina Pvt. Ltd Vs. The Finlay Mills Limited & Another) and AIR 1985 Cal 154 (Adhish Chandra Sinha Vs. Hindustan Gas & Industries Limited & Another). The provisions of Section 10 of CPC is in view of such ratio not attracted in the present case. However, the contention of the defendant is required to be considered before the defendant can be evicted. If the eviction suit is before this Court and the suit for declaration and injunction is before the City Civil Court at Calcutta, there is every likelihood of conflict of decision.

In the aforesaid facts and circumstances, the best course open is to have the City Civil Court suit being TS 249 of 2023 now pending before the Learned Vth Bench at the City Civil Court at Calcutta to be transferred to and tried by this Court.

By consent of parties, the suit being TS No. 249 of 2023 now pending before the Vth Bench at the City Civil Court at Calcutta is transferred to this Court with all pending applications, if any. The records of the title suit being TS No. 249 of 2023 shall be transferred to this Court by the City Civil Court as expeditiously as possible so that the said suit can be re-numbered as an extra-ordinary suit and heard out.

The trial court who will be in seisin of the two suits shall decide as to whether the two suits shall be heard analogously or one after the other as and when the suits are placed for hearing.

Since the applicant being the defendant in the suit and plaintiff before the City Civil Court at Calcutta is enjoying an interim order which is to come to an end

once the transfer takes place. In that event the parties to this suit on the transfer, shall maintain status quo as of date as to possession, nature and character until further orders.

The application being GA 2 of 2023 is disposed of.

Since I have not called for any affidavit, the allegations contained therein are deemed to have not been admitted.

(ARINDAM MUKHERJEE, J.)

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