

ODC-3

IA No.GA 2 of 2022
In
CS 182 of 2022
IN THE HIGH COURT AT CALCUTTA
Ordinary Original Civil Jurisdiction
ORIGINAL SIDE
(COMMERCIAL DIVISION)

MAADHAWA REALPRO PRIVATE LIMITED
VS.
SUSHILA JAIN AND ORS.

BEFORE:

The Hon'ble JUSTICE Arindam Mukherjee

Date : 11th January, 2023.

Mr.Rupak Ghosh, Adv.
Mr. Kuldip Mallick, Adv.
Mr. Arun Kr. Upadhyay, Adv.
Mr. Shantanu Mishra, Adv.
. for the plaintiff
Ms. Noelle Banerjee, Adv.
Mr. Shidarth Sharma, Adv.
Mr. Rishav Dutt, Adv.
Ms. Shalini Basu, Adv.
Ms. Laboni Bhakt, Adv.
...for defendant no.1/applicant.

The Court :- This is an application by the defendant no.1 for vacating an ex parte ad-interim order dated 29th September, 2022 which was extended by a subsequent order dated 28th November, 2022. Although, the initial order was passed by Krishna Rao, J., but in view of the subsequent extension made by this Bench, I am persuaded to take up this application.

The applicant-defendant no.1 says that she had issued cheques in the name of Madhva Real Estate Company Private Limited and not in favour of the plaintiff the Maadhawa Realpro Private Limited. The cheques were dishonoured as will appear from the dishonour memo for the reason "Payee name differs" and not for any other reason attributable to the applicant. It is further submitted by

the applicant-defendant no.1 that she had no dealing with Maadhawa Realpro Private Limited, the plaintiff. All the documents which are annexed to the petition being GA 1 of 2022 wherein the ex parte interim order was passed will show execution in favour of Madhva Real Estate Company Private Limited and not the plaintiff. The learned Advocate for the applicant-defendant no.1 refers to the mortgage deed and other documents in support of this contention.

On behalf of the plaintiff it is submitted that there was a mistake. Instead of Maadhawa Realpro Private Limited cheques were obtained in the name of Madhva Real Estate Company Private Limited. The PAN number of Maadhawa Realpro Private Limited, the plaintiff has been mentioned in the mortgage deed and other documents and not that of Madhva Real Estate Company Private Limited. The mistake has been also explained in the application being GA 1 of 2022 according to the plaintiff. The plaintiff has also referred to the seal and signature at the last page of the mortgage deed and other documents which show the seal of the plaintiff was affixed and not that of the Madhva Real Estate Company Private Limited. The plaintiff also says that the mortgage was created in its favour and the pledge of shares were also to the plaintiff and not to Madhva Real Estate Company Private Limited.

The applicant-defendant no.1 has not disclosed their copy of the mortgage deed from where it could have been made known to the Court as to whether the seal of the plaintiff was affixed in the copy retained by the applicant-defendant no.1. The applicant-defendant no.1 has also not disclosed any document to show mortgage of shares by depositing the share certificates which I am told is in physical form to Madhva Real Estate Company Private Limited instead of the plaintiff.

Even though the plaintiff before depositing the cheques did not inform the applicant-defendant no.1 about the mistake to obtain fresh cheques in its favour but in the aforesaid facts and circumstances, I am not inclined to pass an ad interim order to stay the ex parte order dated 29th September, 2022 as extended by the order dated 28th November, 2022 as applicable to the applicant-defendant no.1 or to set aside the same without inviting affidavits. Let affidavits be filed in this application.

Let affidavit-in-opposition be filed by 25th January, 2023; reply thereto, if any, be filed by 2nd February, 2023. Let this application appear in the monthly list of February, 2023 under the heading 'Adjourned Motion' along with GA 1 of 2022.

(Arindam Mukherjee, J.)