

REVISED

ITEM NO.5 Court 5 (Video Conferencing)

SECTION XIV

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Miscellaneous Application No(s).1651/2020 in SLP(C) No.29455/2019
(Arising out of impugned final judgment and order dated 28-01-2020
in SLP(C) No.29455/2019 passed by the Supreme Court Of India)

KAUSHIK BARUA

Petitioner(s)

VERSUS

PALLAVI BARUA & ANR.

Respondent(s)

(Early hearing application,exemption from filing affidavit,
modification of court order)

Date : 07-10-2020 These matters were called on for hearing today.

CORAM : HON'BLE MR. JUSTICE L. NAGESWARA RAO
HON'BLE MR. JUSTICE HEMANT GUPTA
HON'BLE MR. JUSTICE S. RAVINDRA BHAT

For Petitioner(s) Mr. Maninder Singh, Sr.Adv.
Mr. Gaurav Goel, AOR
Mr. Rajesh Kumar, Adv.

For Respondent(s) Mr. Amit Sharma, AOR
Mr. Dipesh Sinha,Adv.

Mr. Amlan Ghosh,Adv.

Mr. Anshul Tyagi, Adv.
Mr Vaibhav Suri, Adv.
Mr. Prithvi Sidhu, Adv.
Ms. Manjul Mantri, Adv.
Ms. Saloni Sharma, Adv.
Mr. Akhil Anand, AOR

Mr. Anshul Tyagi,Adv.

Ms. Barua Pallavi,Adv.

UPON hearing the counsel the Court made the following
O R D E R

The applicant filed a suit for declaration that
he is the owner of Schedule 'A' and 'B' plots of land
along with permanent injunction. The Trial Court

declined to grant temporary injunction which order was upheld by the High Court. Aggrieved thereby, the applicant filed SLP (C) No. 29455 of 2019 in which initially an order was passed on 17.12.2019 which is as follows :-

"We have heard learned counsel appearing on behalf of the petitioner as well as learned counsel who appears on caveat on behalf of Respondent No.1.

Issue notice.

Mr. Amit Sharma, Advocate, who appears on caveat accepts notice on behalf of Respondent No. 1.

Taking note of the submissions made by the learned counsel for the petitioner, we feel that the matter is required to be considered further.

In the meanwhile, without prejudice to the contentions of both the parties, as an interim arrangement, the petitioner is permitted to withdraw Rs. 2,00,000/- (Rupees two lakhs) per month out of Rs.8,90,589/- received as rent and deposited in the Escrow account by Respondent No. 2 from the rent payable for the month of November, 2019 (Rs.2,00,000/- is payable this month) onwards. The Respondent No. 2 shall therefore pay the same and deposit the balance. The payment of Rs.2,00,000/- (Rupees two lakhs) will be subject to the outcome of this special leave petition and without prejudice to the contentions of both the parties.

List the matter on 28th January, 2020.

Counsel for respondent no. 1 shall file response, if any, on or before 17th January, 2020.

Learned counsel for the petitioner shall file rejoinder affidavit on or before 24th January, 2020."

By an order dated 28.01.2020, the special leave petition was disposed of by permitting the applicant to withdraw Rs.1,50,000/- (Rupees one lac fifty thousand only) from the

Escrow account in modification of the order dated 17.12.2019. The Trial Court was directed to dispose of Title Suit No.181/2019 within a period of nine months and the interim arrangement made by this Court on 28.1.2020 was made subject to the outcome of the suit.

This application is filed for modification of the order dated 28.1.2020 and for release of GBP 28,991.72, i.e., Rs. 28,32,408/- (Rupees twenty eight lac thirty two thousand four hundred and eight only) from the Escrow account towards payment of fee for his daughter's education in England. The applicant further seeks direction to permit him to withdraw Rs.3,00,000/- (Rupees three lac only) per month from the Escrow account.

Mr. Maninder Singh, learned senior counsel appearing for the applicant submitted that his daughter is pursuing her education in England and in view of his business being crippled by the COVID-19, he is not in a position to pay the fees. He submitted that he is willing to furnish security by way of depositing the documents relating to a Flat No. 4A, Merlin Court, 1 Merlin Park, 8 A Leela Roy Sarani, Ballygunj Phari, Kolkatta -700019, West Bengal under Ward No.68 of Kolkatta Municipal Corporation towards security for release of an amount of Rs.60,00,000/- (Rupees sixty lac only) towards payment of his daughter's fee. He further submitted that there is no dispute that he was receiving 50% of the rent till 2019.

Mr. Amit Sharma, learned counsel appearing for the respondent submitted that his application is not maintainable and the applicant ought to have filed a review petition, if he desires modification of the order dated 28.1.2020. Mr. Sharma, further submitted that the applicant is financially sound and can afford to pay for his daughter's education. Mr. Sharma further submitted that the Applicant is not the sole owner of the flat. Mr. Sharma also submitted that the applicant has not been appearing in the Trial Court and is responsible for the delay in disposal of the suit.

In the facts and circumstances of the case, we direct the Trial Court to decide the Title Suit No.181/2019 finally within a period of six months from today.

In the meanwhile, we permit the applicant to withdraw an amount of Rs.60,00,000/- (Rupees sixty lac only) from the Escrow account after furnishing the title deeds of Flat No.4A, Merlin Court, 1 Merlin Park, 8 A Leela Roy Sarani, Ballygunj Phari, Kolkatta -700019, West Bengal under Ward No.68 of Kolkatta Municipal Corporation with the Civil Judge No.1, Kamrup (M) at Guwahati. The above order which is passed in modification of the order dated 28.1.2020 shall be subject to the outcome of Title Suit No.181/2019.

The Miscellaneous Application stands disposed of.

(Gulshan Kumar Arora)
AR-cum-PS

(Anand Prakash)
Court Master

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No.181/2019 within a period of nine months and the interim arrangement made by this Court on 28.1.2020 was made subject to the outcome of the suit.

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