

S/L 22
10.12.2020
Court. No. 19
GB

C.O. 1068 of 2020

Sri Shiba Prasad Chakraborty
Vs.
Smt. Rekha Naskar & Anr.

(Through Video Conference)

Mr. Aniruddha Larmakar.

...for the Petitioner.

This is an application filed by the plaintiff in Title Suit No.580 of 2018 pending before the learned Civil Judge (Junior Division), 4th Court at Howrah.

The petitioner is aggrieved by an order dated January 18, 2020 passed by the learned Additional District Judge, Fast Track 2nd Court at Howrah in Misc. Appeal No.139 of 2018. The learned trial court by an order dated May 17, 2018 refused to pass an ad interim order of injunction in favour of the petitioner on the ground that the plaintiff had failed to prima facie demonstrate that the alleged construction by the defendants was going on illegally and without leaving required side space as per the Municipal Rules. Aggrieved, Misc. Appeal No.139 of 2018 was filed by the petitioner. The learned lower appellate court after hearing the parties dismissed the Misc. appeal by the order dated January 18, 2020, inter alia, holding that some photographs have been shown showing some vacant space between two houses but whether the proposed construction was in violation of the

Municipal Rules or not, was a matter of trial. As such, balance of convenience and inconvenience and irreparable loss and injury was not in favour of the plaintiff but rather any restrain order would cause prejudice to the defendants if the construction in their own land, which is an admitted position was stalled. The learned lower appellate court held that if at all construction was being carried on in violation of the Municipal Rules, the same would be evident during trial and decided accordingly and the consequences of the law would follow.

I am in agreement with the learned lower appellate court specially because the learned lower appellate court rightly thought that the scope of the appeal was limited and justice would be sub-served if the main application for temporary injunction was heard out. The learned lower appellate court also did not entertain the appeal against refusal to pass an ad interim injunction in view of the fact that the issues should be decided by the learned trial court in the application for temporary injunction itself.

Thus, I do not find any reason to interfere with the order impugned. The learned trial judge is directed to dispose of the application for temporary injunction within a period of two months upon giving an opportunity to the opposite parties to file their written objection to the same, if not already filed. The learned trial judge will allow evidence both oral and documentary in support of the claims of the parties. The learned trial judge will also consider the

injunction application independently without being influenced by the order of the learned lower appellate court or this Court.

The revisional application is, thus rejected.

Urgent Photostat certified copy of this order, if applied for, be given to the parties on priority basis.

(Shampa Sarkar, J.)