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C.O.1219 of 2020
(C.A.N. 1 of 2020)
(Through Video Conference)

HIMADRI SPECIALTY CHEMICAL LTD. VS.
NATIONAL INSURANCE COMPANY LIMITED.

Mr. Anirban Roy
Mr. Mahadeb Roy
Mr. Agnish Basu
Mr. Amit Kumar Nag
Mr. Piyush Agarwal
Mr. Swarajit Dey
 ...for the petitioner

Re: C.A.N. 1/2020

This Court is satisfied with the urgency pleaded in the application. Accordingly, C.A.N.1/2020 is allowed and C.O.1219 of 2020 is taken up for immediate consideration.

The petitioner has challenged the order dated September 10, 2020 passed by the learned Judge, 7th Bench, City Civil Court at Calcutta in T.S. No. 532 of 2020.

By the order impugned, the application under Section 151 of the Code of Civil Procedure was disposed of. The prayer made in this application under Section 151 of the Code of Civil Procedure is set out hereunder:-

**“Your petitioner
therefore most humbly prays
before Your Honour that Your**

Honour may graciously pleased to pass an order directing the respondent not to interfere with the possession of the petitioner in respect of the suit property upon payment monthly rents and/or not to disturb the tenancy rights of the petitioner in respect of the suit property upon payment of monthly rents and/or not to proceed further with the letter dated 12 June 2020 and pass such further orders and/or other orders as Your Honour may deem fit and proper; “

Though the application is captioned as one under Section 151 of the Code of Civil Procedure but the relief claimed in the said application falls under Order 39 Rule 1&2 of the Code of Civil Procedure.

The order impugned is an appealable order as the same has been passed by the Court in exercise of its powers under Rule 1&2 of the Code of Civil Procedure. It is no longer res integra that the relief claimed is material and not the caption of the application. As such, the application under Article 227 of the Constitution of India being C.O.1219 of 2020 is dismissed.

The dismissal of the instant application shall, however, not be a bar in challenging the same before the proper forum in accordance with law.

There will be, however, no order as to costs.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties upon compliance of all formalities.

(Hiranmay Bhattacharyya, J.)

