

D/L
Item No. 5
24.11.2020
(Video Conference)
Kole/AD

CO 1388 of 2020

**Sri Debottar Bhubaneswar
Shibtakur Jew - on behalf of the Deity
The Shebaita Jharna Mukherjee & Ors.
-Vs-
Shyamapada Maitur & Ors.**

*Mr. Debjit Mukherjee,
Ms. Susmita Chatterjee,
Mr. Kaustav Bhattacharya,
.....for the petitioners.*

This application under Article 227 of the Constitution of India is filed by the plaintiffs in a suit.

Heard the learned Counsel for the petitioners.

Notice to the respondents is dispensed with preserving their right to seek re-hearing of this matter if they are aggrieved by the directions issued hereby and without prejudice to the contentions as between the parties before the Court below.

The petitioners were successful in getting an order of temporary injunction pending suit. The defendants filed an appeal against that order and lost it. They carried the matter to the High Court under Article 227 of the Constitution in that interlocutory proceeding. That also was decided against the defendants.

Thereafter, the suit was tried and finally decided as per judgment and decree which resulted in the dismissal of the suit. The plaintiffs have filed first appeal under Section 96 of the Code of Civil Procedure before the Lower Appellate Court. The plaintiffs also filed an application under Order 39 Rules 1 and 2 before the Lower Appellate Court. They also invoked Section 151 of the Code of Civil Procedure and sought for an order of temporary injunction pending in first appeal. The Lower Appellate Court found that there is no urgency to grant any ad interim order of temporary injunction without giving the respondents/defendants an opportunity of hearing. Accordingly, ad interim order of temporary injunction was refused and notice was issued on respondents/defendants to show cause within 15 days as to why the prayer for temporary injunction shall not be granted in favour of the appellants/plaintiffs.

The learned Counsel for the plaintiffs who are the petitioners before me points out that the consideration of the application for temporary injunction pending the first appeal may be dragged on and such delay will result in manifest of miscarriage of justice.

The Court has fixed 10.12.2020 for appearance. More importantly, the Court below has required the respondents/defendants to show cause within a period of 15 days. That apart, there is a judicial consideration at the threshold and the Court below concluded that the matter can be considered for order of temporary injunction only after

affording an opportunity of hearing to the respondents/defendants. That does not resultantly give rise to any issue relating to prejudice, jurisdictional illegality, irregularity or impropriety which would demonstrate miscarriage of justice at this stage. Suffice to notice that the Court below having fixed for date of appearance on 10.12.2020, it will have to take effective steps to ensure that the application for temporary injunction filed in the first appeal is decided without delay. That shall be ensured. It is so directed.

It is clarified that this Court has not stated anything touching the rival contentions of the parties on merits before the Court below.

CO No. 1388 of 2020 is disposed of accordingly.

(Thottathil B. Radhakrishnan, C.J.)