

12-11-2020
Subrata

IN THE HIGH COURT AT CALCUTTA
Civil Revisional Jurisdiction

C.O.No.1392 of 2020
Prasenjit Guha & Ors.
-vs-
Surajit Guha

Mr. Sounak Bhattacharya
Mr. Debanjan Das ...for the petitioners

The advocate-on-record for the petitioner undertakes to affirm and properly stamp the petition as per the rules within forty-eight hours of resumption of normal functioning of the court. The petition is taken up through video-conferencing on the basis of such undertaking.

This is an application challenging an order dated September 25, 2020 passed by the learned Additional District Judge, 4th Court, Jalpaiguri in Misc. Appeal No.61 of 2019 arising out of order dated November 2, 2019 passed in Title Suit No.334 of 2019 by the learned Civil Judge (Jr. Division), 1st Court at Jalpaiguri.

By the order impugned, the Misc. Appeal, which was filed at the instance of the plaintiff/opposite party being aggrieved by an order of refusal to grant an ad interim order of injunction dated November 2, 2019 in Title Suit No.334 of 2019, was allowed.

The petitioners/defendants in the suit have challenged the order dated September 25, 2020 on various grounds. The first of such ground being that the learned lower appellate court did not consider the question of possession of the plaintiff/opposite party while passing an order of status quo. That the cardinal principle of granting an ad interim injunction in such

cases was a prima facie satisfaction of possession of the plaintiff in the suit property. It is also submitted that the plaintiff has never been in possession of the suit property as was the finding of the learned trial judge.

I have gone through the order impugned and I find that the learned lower appellate court had come to a prima facie finding that the plaintiff was in possession, the learned court inspected documents of payment of the electricity bills etc. to arrive at such prima facie conclusion.

Learned court of appeal below, had also observed that the allegation that the plaintiff was never in possession of the property was to be decided in the light of the evidence. It was also recorded that the plaintiff is the son of the defendants no.2 and 3, and defendants no. 2 and 3 had initiated proceedings against the plaintiff for maintenance before the maintenance tribunal. The said court had also observed that even if the plaintiff was a licensee, he could not be driven out from the suit property without due process of law. The appeal was disposed of and the learned lower appellate court directed the learned trial judge to dispose of the temporary injunction application expeditiously.

Mr. Bhattacharya prays for stay of the order impugned. At this stage, passing an order of stay of the order impugned would amount to granting the final relief. On the other hand, it appears that the said application for temporary injunction has been directed to be disposed of by the learned lower appellate court expeditiously. Moreover as an order of status quo has been passed directing both parties to maintain status quo in respect of the suit property till the disposal of the temporary injunction application, in my opinion, the said order is

not so prejudicial to the parties and will not cause irreparable injury to either of the parties.

Under such circumstances, in my view, justice will be subserved if the learned Civil Judge (Jr. Division), Jalpaiguri is directed to dispose of the application for temporary injunction filed in Title Suit No.334 of 2019 as expeditiously as possible, preferably within 30 days from date of communication of the order.

The defendants will be at liberty to file their written objections within seven days from the date of reopening of the court below after the puja vacation.

As this court is only considering the point of legality of the order impugned, observations made herein are only tentative in nature. The learned trial judge will dispose of the application for temporary injunction on its own merits without being influenced by any observations made hereinabove or by the learned appellate court.

CO No.1392 of 2020 is disposed of.

[Shampa Sarkar, J]

