

(1 & 2)
12.11.2020
(subrata/subha)

**IN THE HIGH COURT AT CALCUTTA
CIVIL REVISIONAL JURISDICTION**

(Via Video Conference)

**C O 1398 of 2020
with
CAN 1 of 2020**

**Amit Jhunjunwala and anr.
-versus-
M/s. Vinline Engineering Pvt. Ltd and Ors.**

with

C O 1400 of 2020

**Navneet Pandey
-versus-
M/s. Vinline Engineering Pvt. Ltd and Ors.**

Mr. Zeeshan Haque
Mr. Debangshu Dinda
..for the petitioners in CO 1398 of 2020

Mr. Joydeep Kar,
Mr. Arindam Banerjee
Ms. Swati Kedia
... for the applicants/petitioners in CO 1400 of 2020.

Both these matters are taken up together by
consent of both the parties as similar question of law and
facts are involved.

These matters were entertained on November 10,
2020 by my predecessor Judge on the ground that due to
ensuing puja vacation in the court below, the petitioners

were not in a position to prefer an appeal. The order impugned to these revisional applications is an appellable order under Order 43 Rule 1(r) of the Code of Civil Procedure.

The petitioners have pointed out irregularities in the order impugned. The said order is an ex parte ad interim order of injunction restraining the petitioners from entering into the suit property or encroaching thereupon.

It is submitted on behalf of the petitioners that the petitioners have been handed over possession of this suit property by separate lease and business associate agreement.

The petitioners have come up possession of the property in question and they were granted right to carry on business from the said property and also use the same.

According to the petitioners, the ad interim has caused irreparable loss and injury, as they are not able to run their business and/or enjoy the suit property.

The petitioners further allege that the learned court below has travelled beyond the scope of the pleadings in the plaint.

Mr. Om Narayan Rai, learned advocate appearing for the opposite party nos. 1 and 2 submits that the revisional applications are not maintainable. That the revisional applications were heard only because

on the relevant date, the appellate court that is, the court of the learned District Judge, Barasat was not available. According to Mr. Rai, the interim order was refused by the learned court. However, as the order impugned is an appellable order and the application filed by the petitioners for enlisting the matter today is one for renewal of the prayer for an interim order which has already been made before the said applications need not to be considered by this Court as the appellate forum will now be available on and from November 27, 2020 and prayer for interim orders can be made in the said appeal.

Under such circumstances, this Court does not find any reason to keep the revisional application and the connected applications pending. The petitioners are granted leave to prefer an appeal from the order impugned i.e., order dated October 9, 2020 passed by the learned Civil Judge (Junior Division), 1st Court, Barasat, North 24 Parganas in Title Suit No. 437 of 2020 on the basis of the server copy of the order impugned subject to an undertaking to be filed by the petitioners that the certified copy of the said order impugned will be submitted before the court as and when the same is available. The petitioners will be entitled to pray for stay of the order impugned upon service of a copy of the application upon all the opposite parties prior to the date of filing. If such application is filed along with the

memorandum of appeal, the prayer for ad interim stay shall be considered by the lower appellate court within fifteen days from the date of filing. The opposite parties will be at liberty to file their objection to the said application for stay and/or injunction in the meantime.

It is submitted that the application for stay and the appeal should be disposed of expeditiously preferably within a period of two months from the date of filing. As this Court has not gone into the merits of this case and the observations made hereinabove, are tentative, the learned trial judge shall proceed with the appeal independently without being influenced by any observations made therein.

Accordingly, the revisional applications being CO 1398 of 2020 and CO 1400 of 2020 along with the applications are disposed of.

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

(Shampa Sarkar, J.)