

12-11-2020
Subrata/Subha
item no. 6

IN THE HIGH COURT AT CALCUTTA
Civil Revisional Jurisdiction

C.O.No.1403 of 2020
Sri Mukunda Goswami

-vs-

Sri Kishorilal Shaw (Jaiswal) & Ors.

Mr. Amitava Ghosh
Sk. Siraj Uddin ...for the petitioner

Mr. Tapas Kumar Sasmal...for opposite parties

This is an application filed by the plaintiff in Title Suit No. 406 of 2020 aggrieved by an order dated October 16, 2020 passed by the learned Civil Judge (Sr. Division), 2nd Court, Barasat, North 24 Parganas.

By the order impugned, the application under section 151 of the Code of Civil Procedure was rejected on the grounds that the plaintiff was seeking modification and/or variation of the ad interim order dated October 9, 2020 on an incorrect provision of law.

According to the learned court below, as the CPC had specific provisions, if a person is aggrieved by an order of ad-interim injunction, an application under Section 151 of the CPC was not maintainable.

It is submitted by the petitioner that Order XXXIX Rule 4 CPC shall not come in the aid of the petitioner. It is further submitted that if the petitioner as a plaintiff is restricted from carrying out activities in his premises on the basis of an order of status quo, then the whole purpose of the suit and the interim order fails.

I have gone through the order impugned and the facts of the case.

I am of the view that the petitioner has a remedy under the law by preferring an appeal against the order

dated October 9, 2020. However, the petitioner is also at liberty to get the application for injunction heard out expeditiously.

The petitioner submits that the learned Civil Judge (Sr. Division), 2nd Court, Barasat may be directed to dispose of the application for injunction expeditiously upon hearing of all parties.

The learned advocate-on-record of the petitioner is directed to hand over a copy of the plaint and the injunction application to Mr Tapas Kumar Sasmal, learned advocate for the opposite parties, within November 18, 2020.

The opposite parties will be at liberty to file their written objections to the application for temporary injunction. Let the application for temporary injunction be heard out by the learned court below on the date fixed, i.e. February 11, 2021.

It is expected that the said application should be disposed of within a month from the date fixed.

As this court is only considering the point of stay and the 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.

[Shampa Sarkar, J]

