

12.11.2020.
Item no. 11.
Court No.5
ap

**C.O. No. 1409 of 2020
(Through Video Conference)**

**The Board of Trustees for the Port of Kolkata
Versus
Sri Bikaw Chowdhury**

Mr. Dhruba Ghosh, Id. Sr. Advocate,
Mr. Rishad Medora,
Mr. Soumen Ghosh,
Mr. Snehashis Sen,
Mr. Abhishek Banerjee.

...For the petitioner.

Mr. Rahul Ganguly.

...For the opposite party.

This is an application challenging an order dated October 15, 2020 passed by the learned Chief Judge, City Civil Court at Calcutta in Misc. Appeal No. 26 of 2020 arising out of an order of eviction passed by the Estate Officer under the Public Premises (Eviction of Unauthorized Occupants) Act, 1971.

It is the contention of the petitioner that the learned Chief Judge, City Civil Court at Calcutta passed the order impugned without considering the prima facie case, balance of convenience and inconvenience and irreparable loss and injury.

It has been further urged that while deciding the application for vacating the ad interim order, the learned Court below proceeded to reject the application for vacating and extended the ad interim order already

passed as a matter of course without dealing with the contentions of the petitioner.

Mr. Ghosh, learned Senior Advocate appearing on behalf of the petitioner, submits that the learned Court below also erred in not vacating the ad interim order of stay which was passed behind the back of the petitioner and without service of the application. He further submits that by a previous order passed by the said learned Court on July 27, 2020, the learned Court was of the opinion that without service of the copy of the injunction application upon the petitioner, the prayer for ad interim order could not be considered.

Subsequently on August 3, 2020, the learned Court below upon recording that although there was no proof of delivery of the postal articles, the postal track report showing despatch of the notice was sufficient to consider good service, the learned Court below passed an ad interim order staying the order passed by the Estate Officer.

Mr. Ghosh submits that when the learned Court was of the opinion that the petitioner ought to have been served before the prayer for ad interim stay was considered, the said learned Court could not have allowed an ex parte order without recording any reasons and without being satisfied as regards service.

I have gone through the order impugned and heard the contentions of the parties.

The appeal filed under Section 9 of the Public Premises (Eviction of Unauthorized Occupants) Act, 1971 is a statutory appeal.

The learned Court has a discretion to grant an ad interim order of stay so that the appeal does not become infructuous and in the aid of the final relief claimed in the appeal. However while considering the said question, the learned Court below must take into account the prima facie case, balance of convenience and inconvenience and irreparable loss and injury.

The learned Court below refused to vacate the ad interim order of stay being satisfied that the petitioner did not make out a case for variation and vacation of the ad interim order but while rejecting the said application the learned Court below proceeded to dispose of the main application for stay in terms of the order dated August 3, 2020 without recording the arguments of either of the parties and without arriving at any finding with regard to prima facie case, balance of convenience and inconvenience and irreparable loss and injury.

The Court went on to observe that having heard the learned Lawyers appearing for the parties and on consideration of the materials on record, the learned

court thought that the operation of the impugned order should be stayed till disposal of the appeal.

This order in my opinion suffers from gross irregularity, inasmuch as, while refusing to vacate the ad interim order, the Court below could not have automatically proceeded to confirm the ad interim order passed on August 3, 2020 without recording any reasons and without considering the submissions made by the contesting parties. The order impugned is set aside and quashed. The learned court below will hear out and dispose of the application for stay afresh on November 26, 2020.

In view of the urgency involved and in view of the pleadings of the parties, that shed has been gutted in a fire and may collapse at any time creating a hazardous situation, the learned Court below is directed to hear out the application for stay afresh on November 26, 2020 when the matter has been fixed before the learned Court below. Under such circumstances and for the aforesaid reasons, this Court directs that the petitioner shall not put the order of the Estate Officer into execution till the disposal of the application for stay.

The petitioner will be liberty to file the written objection to the application for stay if not filed on or before November 26, 2020.

It is further clarified that the appeal shall be disposed of as far as practicable expeditiously without granting any unnecessary adjournments to either of the parties but not later than December 31, 2020.

With the aforesaid directions, the instant revisional application is disposed of.

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

Urgent photostat certified copy of this order, if applied for, be supplied expeditiously after complying with all necessary legal formalities.

(Shampa Sarkar, J.)