

12.01.2021
Court No. 19
Item No.10
CP

C.O. 23 of 2021
Star Zone Construction Pvt. Ltd.
vs.
Habib Molla & ors.

Mr. Sanjay Saha

....for the petitioner.

Mr. S. Bhattacharya
Ms. Ishani Kundu

...for the opposite parties 1 to 6.

The order impugned to this revisional application is an order passed by the learned District Judge, Howrah in Misc. Appeal No. 93 of 2020. By the order dated December 22, 2020 the learned lower appellate court had stayed the operation of the order impugned dated October 17, 2020 passed by the learned Civil Judge (Junior Division) 4th Court at Howrah in Title Suit No. 961 of 2020. The lower appellate court held that the plaintiff could not be allowed to continue with the construction on a property which was also the subject matter of Title Suit No. 589 of 2018 pending before the learned Civil Judge (Senior Division), 1st Court, Howrah, being a suit for partition and an ad-interim order of injunction in the form of status quo in respect of the nature, character and possession of the suit property had already been passed in the said suit and was subsisting.

Mr. Saha, learned advocate appearing on behalf of the petitioner, submits that the Misc. Appeal was filed by the defendants being aggrieved by the order dated October 17, 2020, passed by the learned Civil Judge (Junior Division), 4th Court, Howrah in Title Suit No. 961 of 2020, restraining the defendants from interfering with the construction work going on in the suit property at the instance of the plaintiff. According to Mr. Saha, the plaintiff purchased the suit property before the order of injunction in the earlier partition suit was passed and his vendor was a party to the partition suit but the plaintiff was not a defendant in the suit. The defendants despite knowing the fact that the plaintiff had purchased the suit property, obtained an ad-interim order in the partition suit behind his back. This, according to Mr. Saha, was an adequate ground for vacating the order passed by the learned lower appellate court.

Heard the parties. Even if the petitioner herein was not made a party in the partition suit, he is claiming under a defendant who was a party in the suit, in which an order of status quo over the self-same property has been passed. As such, Mr. Saha's client claiming through one of the defendants in the partition suit who had suffered an order of status quo with regard to the nature, character and possession of the property in question cannot be

allowed to construct by an interim order until the Misc. Appeal is heard out by the learned Additional District Judge, FTC –III, Howrah.

However, as the ongoing construction has been stayed, the learned court before whom the Misc. Appeal has been transferred, is directed to herd out and dispose of the Misc. Appeal within a period of two months from the next date fixed.

The opposite parties Nos.1 to 6 who had preferred the appeal are already appearing before me and have contested this application. Service upon the other opposite parties is dispensed with as the Misc Appeal was preferred by the opposite parties Nos.1 to 6.

However, the opposite parties Nos.1 to 6 are directed to serve copies of the Memo of Appeal and the applications filed in Misc. Appeal along with the server copy of this order upon the learned advocates who are appearing for the defendants Nos.7 to 10 in order to facilitate the hearing of the appeal.

The learned lower appellate court will consider the Misc. Appeal on its own merits without being influenced by any observation made hereinabove.

The revisional application is disposed of. There shall be no order as to costs.

Urgent photostat certified copy of this order, if applied for, be given to the parties as expeditiously as

possible subject to compliance of all usual formalities.

(Shampa Sarkar, J.)