

14.01.2021
Sl. No.20
srm

C.O. No. 67 of 2021

Mrs. Anita Gupta
Vs.
Partha Priya Chatterjee & Ors.

Mr. Kushal Chatterjee

...for the Petitioner.

Mr. Saunak Sengupta

...for the Opposite Parties.

Affidavit of service is taken on record.

This revisional application has been filed by the defendant in Title Suit No.527 of 2020 pending before the learned Civil Judge (Junior Division), 1st Court at Barasat.

According to the petitioner, the order impugned would reveal that there was nothing on record to show that the provisions of Order XXXIX Rules 3(a) and (b) of the Code of Civil Procedure have been complied with. The petitioner had filed an application for vacating the order of ad interim injunction on the ground of non-compliance of the provisions enshrined in Order XXXIX Rules 3(a) and (b). The petitioner is aggrieved by the order of the learned Court below whereby the learned Court below has fixed the date of hearing of the application for injunction on February 9, 2021 without considering the application for vacating the ad interim order. According to the petitioner, the law is very clear on the point that if the requisites are not filed, then the ad interim injunction

could not be continued. Thus, according to the petitioner, the said application filed by the defendant ought to have been heard prior to the hearing of the application for temporary injunction.

The learned Advocate for the opposite parties submits that the order reflects that the applications will be heard together and there is no reason to interfere with the order impugned.

I accept the contention of the learned Advocate for the defendant/petitioner to the extent that the application filed by the petitioner for vacating the ad interim order should be heard prior to the application for injunction is taken up for hearing.

It is hence directed that the petitioner shall approach the learned Court below with notice to the opposite parties for fixing a date prior to February 9, 2021 for hearing of the application for vacating the order of ad interim injunction for non-compliance of the provisions of Order XXXIX Rules 3(a) and (b) read with Section 151 of the Code of Civil Procedure, 1908.

Liberty is granted to the opposite parties to file the written objection to the said application within 10 days from date.

This Court has not gone into the merits of the contention of the petitioner and the learned Court below will proceed in accordance with law. Upon disposal of the said application, the learned Court below will proceed with application for injunction.

The learned Court below will act on the basis of the server copy of this order.

Leave is granted to the learned Advocate for the opposite parties to file vakalatnama in the department.

This revisional application is, thus, disposed of.

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

Urgent photostat certified copy of this order, if applied for, be given to the parties on priority basis.

(Shampa Sarkar, J.)