

**SANTOSH BISWAS & ORS. VS. SRI SRI
KUMUDESWAR BHAIKAR SHIB THAKUR**

Mr. Partha Chakraborty
Ms. Mousumi Singha
..for the petitioners
Mr. Nilanjan Bhattacharjee
Mr. Ravi Ranjan Kumar
Mr. Aniruddha Karmakar
...for the opposite party

This revisional application has been filed against an order dated January 18, 2021 passed by the learned Additional District Judge, 1st Court, Uluberia in Misc. Appeal No. 10 of 2020. The petitioners are the Shebait of Kumudeswar Bhairab Shib Thakur Deity. They have challenged the said order on the ground that the learned Court below ought to have allowed the stay of operation of the order of the learned Trial Judge passed in the application for temporary injunction in respect of the Title Suit No. 36 of 2017. The title suit is one for declaration of the Shebaitship of the plaintiff. The learned trial court by an order dated November 23, 2017 disposed of the application for temporary injunction with a direction upon the parties to maintain status quo with regard to the nature, character and possession of the suit

property till the disposal of the suit and also restrained the parties from disturbing each others performance of duties and seba puja till the disposal of the suit. Aggrieved by the aforementioned order, an appeal was filed, being Misc. Appeal No. 3 of 2018.

By an order dated April 3, 2019, the learned Additional District Judge, 2nd Court, Uluberia, Howrah set aside the order passed by the learned Trial Judge with a direction upon the learned Trial Judge to modify the order passed in the application for temporary injunction by mentioning specific schedule for performing seba puja by the respective shebaites and with a further direction upon the shebaites to maintain status quo with regard to the nature, character and possession of the suit property. This order was not challenged by the petitioners. The learned Trial Judge, thereafter, modified the order in terms of direction of the learned Additional District Judge and fixed the durations and periods during which the respective shebaites would perform their seba puja with further restriction upon the other shebaites from disturbing the seba pujas to be conducted by the respective shebaites during their respective periods.

The petitioners again being aggrieved by the said order preferred Misc. Appeal 10 of 2020 and prayed for stay of order of the learned Trial Judge dated March 3, 2020.

The learned lower appellate court refused to stay the order of the learned Trial Judge on the ground that the learned Trial Judge had acted in terms of the order dated April 3, 2019 passed in Misc. Appeal No. 3 of 2018. The appeal has been fixed for SR and AD and lower court records have been called for. According to the petitioners, the learned Trial Judge by allowing 61 days to the group of the shebait to perform seba puja including the plaintiff has already decided the suit in its final form. That the plaintiff has failed to prima facie prove before the learned Trial Judge that the plaintiff was performing seba puja apart from the record of rights wherein the plaintiff have been mentioned as a shebait, no other documents have been produced before the learned Court which would indicate that the plaintiff was regularly performing the seba puja.

On the contrary, reliance has been placed on the affidavits filed by the Purohit, receipts showing payment of charges for hire of generator and electricity bills in order to show that one of the petitioners were actually performing the seba puja.

With regard to the prima facie case and balance of convenience and/or inconvenience, the learned lower appellate court has to decide the issue on the basis of the evidence and documents relied upon by the respective parties in the appeal.

This revisional application arises out of an order of refusal to pass an interim order of stay of the order of the learned Trial Judge in a Misc. Appeal arising out an order of injunction.

The plaintiff as it appears prima facie is claiming to be a shebait only on the basis of record of rights which have a presumption of correctness at least with regard to the possession but this presumption is rebuttable by evidence in trial. Whether prima facie case has been established by the averments in the plaint and documents are matters to be looked into by the lower appellate court and this Court has not gone into the merits of the appeal. The contention of the petitioners that the order for temporary injunction amounts to allowing the main relief in the suit is a serious issue and shall be ultimately decided by the lower appellate court.

Under such circumstances, this revisional application is disposed of with a direction upon the learned lower appellate court to consider the appeal on its own merits along with the application for stay and dispose of the same within 15 days from date

The opposite shall file the written objection within 10 days from date.

The learned Civil Judge (Junior Division), Amta, Howrah shall not proceed with the application

under Section 151 of the Code of Civil Procedure till the disposal of the appeal. The prima facie case that the plaintiff was regularly performing the seba puja needs to be established in the Misc. appeal. The record of rights will at best give rise to the presumption of possession and nothing else in this suit.

This revisional application is disposed of.

There will be however no order as to costs.

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

(Shampa Sarkar,J.)

