

**NURJAMAL SK. & ORS. VS. SABAYIT
DIPENDRA NARAYAN ROY**

Mr. Sumitra Dasgupta

Md. Hafiz Ali

..for the petitioners

Mr. Partha Pratim Roy

Mr. Sarbananda Sanyal

..for the opposite party

This revisional application has been filed challenging the order dated September 4, 2020 passed by the learned Civil Judge, Senior Division, Kandi, District Murshidabad in Misc. Appeal No. 03 of 2020. Misc. Appeal No. 03 of 2020 arises out of an order dated August 18, 2020 passed by the learned Civil Judge, Junior Division, 2nd Court, Kandi, District Mushidabad in Title Suit No. 154 of 2020.

The learned Civil Judge, Junior Division passed an order directing the parties to maintain status quo with regard to 'Ka', 'Kha1' and 'Kha2', schedule suit properties, the status of which has been noted as 'Amon' till the disposal of the suit.

The opposite party preferred the Misc. Appeal being aggrieved by the order of status quo. By the order impugned, the learned lower appellate Court directed that notice of Misc. Appeal be issued and restrained the

defendant nos. 1 to 4 from entering into the suit property till the disposal of the Misc. Case.

Mr. Dasgupta, learned Senior Advocate appearing on behalf of the petitioners submits that the order was an unreasoned one, that the prima facie case, balance of convenience and inconvenience and irreparable loss and injury have not been considered by the learned lower appellate Court while passing the interim order. That the documents filed by the defendant nos. 1 to 4, that is, deed of lease on the basis of which they are claiming possession since 1987 or even before were not taken into consideration by the learned lower appellate Court and as such the order of injunction could not be sustained.

Mr. Roy, learned Advocate for the plaintiff/opposite party submits that the deed of lease could not be taken into consideration for adjudicating the prima facie case as the same was a photostat copy of the original and it was the specific case of the plaintiff that the original deed was not in existence.

I have heard the rival contentions of the parties.

It is settled law that while granting an ad-interim order of injunction, the Court must satisfy itself about the prima facie case, balance of convenience and/or inconvenience and the irreparable loss and

injury. The order impugned is also devoid of any reasons. The factors to be taken into consideration even at the stage of ad-interim order of injunction have been reiterated in various decision of **Shiv Kumar Chadha Etc. Etc vs. Municipal Corporation of Delhi** reported in **1993 SCC (3) 161**, held as follows:-

“A party is not entitled to an order of injunction as a matter of right or course. Grant of injunction is within the discretion of the Court and such discretion is to be exercised in favour of the plaintiff only if it is proved to the satisfaction of the Court that unless the defendant is restrained by an order of injunction, an irreparable loss or damage will be caused to the plaintiff during the pendency of the suit.

Before any such order is passed the Court must be satisfied that a strong prima facie case has been made out by the plaintiff including on the question of maintainability of the suit and the balance of convenience is in his favour and refusal of injunction would cause irreparable injury to him.”

In the decision of **State of Uttaranchal & Anr. vs. Sunil Kumar Vaish & Ors.** reported in **(2001) 8 SCC 670**, the Hon’ble Apex Court held as follows:-

“19. *Judicial decisions must in principle be reasoned and the quality of a judicial decision depends principally on the quality of its reasoning. Proper reasoning is an imperative necessity which should not be sacrificed for expediency. The statement of reasons not only makes the decision easier for the parties to understand and many a times such decisions would be accepted with respect. The requirement of providing reasons obliges the Judge to respond to the parties' submissions and to specify the points that justify the decision and make it lawful and it enables the society to understand the functioning of the judicial system and it also enhances the faith and confidence of the people in the judicial system.”*

The order impugned does not have any legs to stand and the same is quashed and set aside.

The learned lower appellate Court is directed to hear out the Misc. Appeal within a period of three months from the date of communication of this order. It is informed that the appeal is otherwise ready for hearing. As the question of injunction is left open the learned lower appellate Court will decide the issue till the disposal of the Misc. Appeal.

The parties will maintain status quo with regard to the nature and character and enjoyment of the suit property.

The parties are at liberty to apply before the learned lower appellate Court for fixing the date in terms of this order.

This Court has not gone into the merits of the claim and counter claim of the parties and the learned lower appellate Court shall decide the issue independently and in accordance with law.

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.)

