

02.03.2021
Sl. No. 4
srm

C.O. No. 302 of 2021

**Bhagirath Roy
Vs.
Anita Biswas & Anr.**

Mr. Shyamal Chakraborty,
Mr. Bimalesh Kumar Jain

...for the Petitioner.

Mr. Parikshit Basu,
Mr. Rajnil Mukherjee

...for the Opposite Parties.

Affidavit of service is taken on record.

This revisional application has been filed by the plaintiff/petitioner against an order dated October 3, 2019 passed by the learned Additional Distinct Judge, 2nd Court, Sealdah, South 24-Parganas in Misc. Appeal No.4 of 2019. The Misc. Appeal No.4 of 2019 was filed by the opposite parties/defendants being aggrieved by an order dated December 19, 2018 passed by the learned Civil Judge (Junior Division), Additional Court, Sealdah, District South 24-Parganas in Title Suit No.1302 of 2018.

By an ad interim order of injunction dated December 19, 2018, the learned Trial Court restrained the defendants from evicting the plaintiff without due process of law. Aggrieved, the opposite parties preferred the misc. appeal. The learned

lower appellate Court allowed the misc. appeal thereby vacating the order of ad interim injunction passed by the learned Court below and directed the learned trial Court to hear out the application for temporary injunction.

Aggrieved, the plaintiff moved this Court.

It is an admitted case that the petitioner was the tenant under the opposite parties. An agreement is on record. It is not the case of the opposite parties that the plaintiff was not in possession of the suit property. There is an eviction notice issued by the opposite parties directing the plaintiff to vacate the suit premises with the expiry of the tenancy agreement. There is also an allegation of default in payment of rent. The plaintiff has also produced documents to show the electricity connection in the name of the plaintiff in the suit premises.

Whether the plaintiff is a *bona fide* tenant is a matter to be decided in the suit. The leaned lower appellate Court held that the plaintiff failed to produce documents to show that he was a *bona fide* tenant and thus set aside the order of injunction.

I am of the opinion that at the stage of ad-interim protection, the only consideration would be to satisfy the Court whether the plaintiff had established a *prima facie* case of being in possession of the property in question. When the

landlords despite having a relief under the law to file a suit for eviction having not done so as yet, the plaintiff is entitled to seek protection. It is an established principle that nobody can be evicted without the due process of law. As such, the learned lower appellate Court erred in vacating the ad interim order of injunction, during the pendency of the application for temporary injunction before the learned trial Court. There was no written objection accompanied by documents before the learned lower appellate court to counter the prayer for ad interim injunction made by the plaintiff.

Whether the plaintiff is entitled to an order of temporary injunction is to be decided by the learned trial Judge on the basis of the documents filed by the respective parties. At the ad-interim stage, when it was *prima facie* apparent that the plaintiff was in possession of the property in question on the basis of the electricity bills, complaint before the police and also the eviction notice issued by the landlords, in my opinion, the learned trial Judge had correctly passed an ad-interim order restraining the defendants from evicting the plaintiff/petitioner without the due process of law.

The order impugned is set aside and quashed.

The opposite parties are directed to file their written objection to the application for temporary injunction within

two weeks from date along with their supporting documents. The learned trial Judge is directed to dispose of the temporary injunction within two months from date on the basis of the records and documents to be filed by the respective parties.

This Court has not gone into the merits of the application for temporary injunction but has restrained this order exclusively on the point of grant of ad interim injunction in favour of the plaintiff till the disposal of the temporary injunction application. The plaintiff shall not be disturbed or dispossessed by the defendants except by the due process of law till the disposal of the application for temporary injunction.

The 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 given to the parties on priority basis.

(Shampa Sarkar, J.)