

07.04.2021
Court No. 19
Item no.13
CP

C.O. 502 of 2021

Sharat Das
vs.
Samir Dutta

Mr. Subhrajyoti Ghosh

.....for the petitioner.

Mr. Ranajit Talukdar

.....for the opposite party.

The order under challenge is an order dated February 15, 2021, passed by the learned Additional District Judge, Nabadwip, Nadia in Misc. Appeal No. 3 of 2021.

By the order impugned the learned lower appellate court refused to pass an ad-interim order of injunction prayed for by the petitioner/plaintiff. Misc Appeal was filed against an order of rejection of a prayer for ad-interim injunction in Title Suit No.18 of 2018 pending before the learned Civil Judge (Junior Division) at Nabadwip, Nadia. It appears that the learned lower appellate court was of the view that without giving an opportunity of hearing to the opposite party/defendant, an ad-interim order of injunction should not be passed.

I find that the learned lower appellate court did not record its reasons as to why the case did not

warrant an immediate protection as prayed for by the petitioner.

Mr. Talukdar, learned advocate appearing on behalf of the opposite party/defendant, submits that the alleged construction has been going on as per the sanctioned plan and the allegations of encroachment are baseless.

However, as the Misc. Appeal is still pending and the parties are before me, justice would be subserved if the learned lower appellate court is directed to dispose of the Misc. Appeal along with the application within two month from date of communication of this order upon hearing both the parties in view of the allegations of encroachment made by the petitioner.

As the revisional application has been served upon the defendant and his learned advocate is appearing, service of notice of the Misc. Appeal is dispensed with as this revisional application contains all the papers.

The written objection to the application filed in the Misc. Appeal shall be filed within 10 days from date by the opposite party.

The parties shall be at liberty to approach the learned lower appellate court for preponing the date so that this order is complied with.

This court has not gone into the merits of the case. The learned lower appellate court shall proceed independently and on the basis of the submissions and pleadings of the parties.

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.)