

S/L 14
20.04.2021
Court. No. 19
GB

C.O. 885 of 2021

Bapi Das & Anr.
Vs.
Sri Nakul Saha & Ors.

(Through Video Conference)

Mr. Kumarjyoti Tewari,
...for the Petitioners.

Mr. Sundar Gopal Bhattacharya.
...for the Opposite Party Nos.1 & 2.

This revisional application has been filed challenging an order dated March 17, 2021, passed by the learned Additional District Judge, 3rd Court at Barasat, District 24 Parganas (North) in Misc. Appeal No.47 of 2020.

The learned Additional District Judge set aside the *ad interim* order passed by the learned Civil Judge (Junior Division), 1st Court at Barasat, District 24 Parganas (North) in Title Suit No.245 of 2020. The learned trial judge restrained the defendant nos.1 and 2/opposite parties from raising any construction on the 'B' schedule of the suit property. The said order was challenged in Title Appeal No.47 of 2020 by the opposite party nos.1 and 2, who are represented before this Court.

The learned lower appellate court came to the conclusion on perusal of certain documents that each of the parties had their demarcated portion of land and the order impugned was passed without any discussion of the *prima*

facie case and was devoid of reasons. The learned lower appellate court set aside the order of the learned trial judge and directed the learned trial judge to hear out the application for temporary injunction on contest.

Having perused the order passed by the learned lower appellate court, I find that the learned lower appellate court set aside the order of learned trial judge, inter alia, holding that even at the stage of passing an ad interim order of injunction, reasons would have to be assigned in the order, for the court to arrive at a conclusion that the petitioner had made out a *prima facie* case.

It has been settled by several judicial decisions, that even at the stage of passing an order of *ad interim* injunction, the learned court should not only decide the *prima facie* case but also decide the balance of convenience and inconvenience and irreparable loss and injury that may be caused to the parties in case an order is passed or in case an order is not passed at the *ad interim* stage. A party against whom an order of *ad interim* injunction is passed should at least know the reasons, which prompted the court to arrive at a conclusion that the prayer for *ad interim* injunction should be allowed. *Ad interim* injunction cannot be allowed at the mere asking. From the order of the learned trial judge, I do not find any reasons as to what prompted the learned trial judge to hold that a *prima facie* case has been made out by the plaintiffs.

I do not find any irregularity in the order impugned.

The learned trial judge is directed to hear out the application for temporary injunction on contest preferably within one month from the date of communication of this order. The opposite parties will be at liberty to file their written objection within seven days mandatorily. An advance copy of the objection should be served upon the plaintiffs. The learned trial judge shall hear out the injunction application on its own merits and in accordance with law. The learned trial judge will not be influenced in any manner by the order of the learned lower appellate court. This Court has also not made any observations on the merits. This Court is of the opinion that the order of the learned trial judge suffered from material irregularity in the absence of the reasons and the learned lower appellate court rightly passed the order impugned.

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.)