

19.05.2021
(S/L-04)
Ct.-18
(Susanta)

(Via Video Conference)

C.O. 1175 of 2021

Raojahan Ali Khan & Anr.
Vs.
Jakir Hossain Khan & Ors.

Mr. Uday Narayan Betal,
..... For the Petitioners.

Mr. Iftekar Munshi,
..... For the Opposite Parties.

The petitioners are the plaintiffs in a suit for declaration and injunction being Title Suit No. 103 of 2020 which is pending before the Learned Civil Judge (Junior Division) at Amta, District-Howrah.

The petitioners in the said suit filed an application under Order XXXIX Rules 1 and 2 of the Code of Civil Procedure praying, inter alia, for an order of injunction restraining the defendants/opposite parties from raising any construction over the suit property.

The learned Trial Judge by the judgment and order dated April 16, 2021 has dismissed the said application on contest.

The petitioners aggrieved by the said order has preferred the connected Miscellaneous Appeal being Misc. Appeal No. 34 of 2021 which

is pending before the First Court of Learned Additional District Judge at Uluberia, District-Howrah.

The petitioners approached this Court in revision being C.O. 1104 of 2021 complaining delay in disposal of the applications filed by them in connection with the said appeal.

The said revisional application was disposed of with a request to the Appeal Court below to dispose of the application and the appeal expeditiously preferably within a period of three months from the next date fixed in the said appeal.

The said direction could not be complied with due to the bloodcurdling outbreak of the second wave of COVID-19 pandemic.

The petitioners in the present revisional application have challenged an order passed in the said appeal being order no. 2 dated April 2020 whereby the learned Appeal Court below has deferred the hearing of the application filed by the petitioners for stay.

Mr. Betal, learned advocate appearing on behalf of the petitioners submits that the Appeal Court below in the present situation is not functioning as such the petitioners are unable to proceed with their appeal and the application thereto. The opposite party taking

the advantage of the said situation are carrying on construction over the suit property.

He, therefore, prays that in view of such a situation the opposite parties may be restrained by an order of injunction from carrying on such construction work.

Mr. Munshi, learned advocate appearing on behalf of the opposite parties submits that the Appeal Court is very much available but is functioning in a limited manner. He further submits that if there be any urgency the petitioners can very well approach the appeal Court below.

Heard learned counsel for the parties, perused the materials on record.

It is not the case of the petitioners that due to the non-availability of the appeal Court below the remedy of appeal against the order of learned Trial Judge has become illusory. No doubt the said appeal Court under the prevailing situation is functioning in a limited manner in respect of urgent matters only but the petitioners are always at liberty to approach the appeal Court for hearing of their application for injunction filed in connection with the pending appeal subject to the satisfaction of the appeal Court that the matter involves grave urgency.

C.O. 1175 of 2021 is disposed of with the above observations without any order as to costs.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties subject to compliance with all requisite formalities.

(Biswajit Basu, J.)