

C.O. 1394 of 2021
(Through Video Conference)

Sri Umesh Kumar Singh
Vs.
Sri Binay Majumder & Anr.

Mr. Sourendra Nath Mookherjee, Sr. Adv.
Mr. Partha Protim Roy
Mr. Pradyat Saha
Mr. T. Mukherjee

.....For the petitioner

Mr. Vikram Wadehra
Ms. Vidushi Chokhani
Mr. Soumava Ghosh

..For the Opposite Party Nos. 1 & 2.

The defendant no. 1 in a suit for declaration and injunction is the petitioner of the present application under Article 227 of the Constitution of India.

The opposite party nos. 1 & 2 have filed the said suit being Title Suit No. 231 of 2021 pending before 1st Court of learned Civil Judge(Junior Division) at Durgapur, District-Paschim Bardhaman.

The said opposite parties in the said suit filed an application under Order XXXIX Rules 1 and 2 of the Code of Civil Procedure. The learned Trial Judge, on the said application passed an ad interim order of injunction on July 13, 2021 thereby directing the petitioner not to effect construction whatsoever over the suit premises till August 12, 2021.

The petitioner, being aggrieved by the said ad interim order of injunction has preferred the connected

Miscellaneous Appeal being Misc. Appeal No. 10 of 2021 pending before the learned Civil Judge (Senior Division) at Durgapur.

The petitioner is challenging the order no. 1 dated July 30, 2021, order no. 2 dated August 4, 2021 and order no. 3 dated August 5, 2021 passed in the said appeal whereby the Appeal Court below has deferred the prayer of the petitioner for stay of the order under challenge in the said Misc. appeal.

Mr. S. N. Mookherjee, learned senior Advocate appearing on behalf of the petitioner submits that the plaintiffs and the principal defendant no. 1 of the said suit are members of Durgapur Ex-Serviceman Co-operative Housing Colony Society Limited. He draws my attention to the relief sought for in the suit to contend that the dispute sought to be raised in the suit is a dispute within the meaning of Section 102 of the West Bengal Co-operative Societies Act, 2006 and referable to the concerned Registrar of the Co-operative Societies, consequently, the jurisdiction of the Civil Court to decide the said dispute is barred under Section 145 of the said Act.

He further submits that such being the background of the order impugned in the appeal, the Appellate Court is not justified in deferring the prayer of the petitioner for stay of the said order.

Mr. Wadehra, learned Advocate on behalf of the plaintiff-opposite party submits that the petitioner since has already filed an application under Order VII Rule 11(d)

of the Code praying rejection of the plaint of the said suit on the ground that the said suit is barred by law and when the learned Trial Judge has fixed the next date of hearing of the said application on August 20, 2021, it would be pre-matured to go into the issue of maintainability of the said suit at this stage as argued by Mr. Mookherjee.

Having heard learned counsel for the parties and on perusal of the materials-on-record, it appears that a serious question regarding maintainability of the connected suit has been raised which needs to be addressed immediately before dealing with any proceeding to provide interim protection to the plaintiffs in aid of the said suit.

The next date fixed for hearing of the said application i.e. on August 20, 2021, since has been declared a holiday, the learned Trial Judge is directed to dispose of the said application under Order VII Rule 11(d) of the Code positively on the next available working day i.e. on August 23, 2021, however, if the said application cannot be disposed of on the said date due to some unavoidable reason, it must be disposed of within a week thereafter.

The learned Trial Judge shall not grant any unnecessary adjournment to either of the parties. The parties are at liberty to exchange their affidavits on the said application before the said next date of hearing.

The learned Trial Judge after disposal of the said application, depending upon the outcome of it shall

proceed to dispose of the said application under Order XXXIX Rules 1 & 2 of the Code expeditiously.

Mr. Mookherjee, on instruction, submits that under the present circumstances, his client is not willing to proceeding with the connected miscellaneous appeal.

In view of such stand of petitioner, the Miscellaneous Appeal No. 10 of 2021 is treated to be dismissed as not pressed.

The appeal Court below is directed to send down the Lower Court Records immediately to the Court of learned Trial Judge after recording formal order of dismissal in the records of the said miscellaneous appeal.

C.O. No. 1394 of 2021 is disposed of with the above terms without any order as to costs.

All parties shall act upon the server copy of this order downloaded from the official website of this Court.

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

(Biswajit Basu, J.)