

(18)
07.10.2021
(p.jana)

IN THE HIGH COURT AT CALCUTTA
CIVIL REVISIONAL JURISDICTION

(Via Video Conference)
CO No. 1751 of 2021

Smt. Mukta Banik Chowdhury & ors.

-versus-

Smt. Kalpana Banik Chowdhury & ors.

Mr. Sanjay Mukherjee,
... for the petitioners.

Mr. Sujit Saha,
Mr. Sagnik Bhattacharya, ... for the opposite parties.

Mr. Sanjay Mukherjee, learned counsel appearing on behalf of the petitioners, files certified copy of the order of the learned Trial Judge being order no. 19 dated April 12, 2021 which is taken on record.

The defendants in a suit for declaration being Title Suit No. 12 of 2020 pending before the learned Civil Judge (Junior Division), Alipore, District-24 Parganas (South) are the petitioners of the present application under Article 227 of the Constitution of India.

The learned Trial Judge by the order no. 19 dated April 12, 2021 allowed an application under Section 151 of the Code of Civil Procedure filed by the plaintiff/opposite party thereby restraining the defendant nos. 4 to 8 by an order of injunction from withdrawing money from the account standing in the name of Late Arun Banik Chowdhury.

The petitioners, aggrieved by the said order, preferred the connected Misc. Appeal No. 120 of 2021.

The learned District Judge at Alipore, District: 24 Parganas (South) by the order impugned being order no. 3 dated August 23, 2021 has refused to admit the said appeal

and has dismissed it holding that the order being passed under Section 151 of the Code is not open to appeal.

Regardless the caption of the application, the learned Trial Judge had passed the order of injunction in exercise of his power under Order XXXIX Rules 1 and 2 of the Code rendering the said order open to appeal under XLIII Rule 1(r) of the Code. [See *Ravi Maharia vs. Reliance Petroleum Ltd. And Ors.* reported in **2000(1) CHN 439**].

The order impugned is set aside only on the limited ground as aforesaid. It is made clear that this Court has not gone into the merit of the said appeal.

Mr. Sujit Saha, learned advocate appearing on behalf of the plaintiff/opposite party submits that the miscellaneous appeal is defective as all the defendants have not been made party to the said appeal.

Mr. Sanjoy Mukherjee, learned advocate for the petitioners cannot dispute the said contention of Mr. Saha.

C.O. 1751 of 2021 is disposed of with a request to the learned District Judge, District-24 Parganas(South) at Alipore to consider the Misc. Appeal No. 120 of 2021 from the stage of admission, subject to the removal of all defects in the said appeal. There shall be no order as to costs.

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

(Biswajit Basu, J.)