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Ct. 18
07.10.2021

**C.O. No. 1769 of 2021
(Via Video Conference)**

**Sri Shyama Prasad Das Gupta
Vs.
Sri Debi Prasad Das Gupta & Ors.**

Mr. Kaushik Dey,
Mr. Debnath Mahata ... For the petitioner.

Mr. Kushal Chatterjee,
Mr. Debabrata Roy ... For the O.P. No. 1.

The plaintiff in the suit for declaration of title being Title Suit No. 160 of 2020 pending before the 2nd of learned Civil Judge, (Junior Division) at Barrackpur, District – 24 Parganas (North) is the petitioner of the present application under Article 227 of the Constitution of India.

The petitioner 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 August 12, 2020 passed an ad interim order of injunction on the said application, thereby restrained the defendant no. 1, his men and agents from changing the nature and character of the suit schedule “A” and “B” property till September 11, 2020.

The defendant no. 1 aggrieved by the said order preferred the connected Miscellaneous Appeal No. 21 of 2021.

The learned Additional District Judge, Fast Track, Court IV, Barrackpur, District – 24 Parganas (North) by the order impugned being order dated August 18, 2021 has allowed the said appeal ex parte.

The petitioner complains that he did not get the opportunity to contest the said appeal.

Mr. Kushal Chatterjee, learned advocate appearing on behalf of the defendant no. 1 although strenuously argued that the petitioner avoided the service of notice of the said appeal.

Be that as it may, for the ends of justice and to give the petitioner an opportunity to contest the said appeal, the order impugned is set aside.

The appeal Court below is directed to hear out the said appeal afresh in accordance with law.

It is made clear that this Court has not gone into the merit of the said appeal, it is for the appeal Court below to decide the same.

In view of the nature of order under challenge in the said appeal the appeal Court below is requested to conclude the hearing and disposal of the said appeal within one effective working month of the appeal Court below from the date of communication of this

order and in doing so shall not grant any unnecessary adjournment to either of the parties.

Mr. Kaushik Dey, learned advocate appearing on behalf of the petitioner waives formal service of notice of the said appeal upon his client. The connected miscellaneous appeal be treated ready as regards service.

The parties are directed to appear before the appeal Court below upon production of the server copy of this order on **November 09, 2021** and the appeal Court below is requested to act on such communication.

In default of appearance of the petitioner before the appeal Court below on the said date, the appeal shall proceed *ex parte* against him.

C.O. 1769 of 2021 is disposed of with the above terms 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.)