

04.10.2021
Item No.8
Ct. No.7
CHC

**C.O.1784 of 2021
(Physical Hearing)**

**Raojahan Ali Khan & anr.
Vs.
Jakir Hissain Khan & ors.**

Mr. Piyush Chaturvedi,
Mr. Bhagbat Chaudhuri,
Sk. Toslim Ali

...for the petitioners

Mr. Tanmoy Mukherjee,
Mr. Iftekar Munshi

...for the opposite parties

The revisional application is against the impugned judgement and order dated 27th September, 2021, passed in Misc.Appeal No.34 of 2021, dismissing the Misc.Appeal and injunction application under Order 39 Rule 1 and 2 C.P.C. thereby affirming the order dated 16th April, 2021, passed by learned Civil Judge (Junior Division), Amta, Howrah, in Title Suit No.103 of 2020 refusing to grant temporary injunction under Order 39 Rule 1 and 2 C.P.C.

Since no order of injunction was granted by the learned trial court in connection with the aforesaid suit, a Misc.Appeal was thereafter preferred, which was ultimately dismissed after a contested hearing.

It is submitted by the learned advocate for the petitioners that the some of the findings reached by the learned trial court as well as the first lower appellate court may prejudicially affect the ultimate decision of the suit, and for appropriate decision of this case, intervention of this Court is felt necessary.

It is further contended by the learned advocate for the petitioners that though the petitioners might not have been favoured with injunction, both by the learned trial court as well as by the first lower appellate court, but both the learned court below ought not have made any adverse findings having impact over the ultimate decision of this case.

Mr. Tanmoy Mukherjee, learned advocate representing the opposite parties submits that learned first lower appellate court as well as the learned trial court had actively considered the materials produced and the submissions made by both the parties to this case, and upon making due consideration of the provisions of the law in context with the submissions advanced by both the parties, both the court below refused to grant any injunction, and thus dismissed the Miscellaneous Appeal.

It is submitted by the learned advocate for the opposite parties that the opposite parties being defendants have already filed an application under Order 7 Rule 11 C.P.C, which is pending and the

same is also required to be heard out and disposed of by the learned court below, as the pending suit is not maintainable before the learned court below.

It is proposed by the learned advocate for the opposite parties that since the first lower appellate court upon due exercise of its authority including its judicial discretion, what has been reasonably exercised, has refused the prayer for injunction thereby dismissing the appeal, there lies nothing to be interfered with by this Court, and accordingly, sought for dismissal of this revisional application.

Having considered the submissions of both sides, it appears that learned advocate for the petitioners is highly apprehensive of the findings reached by the learned court below, which is stated to be having direct impact over the pending suit adversely. Without any controversy, the settled proposition of law is that findings arrived at in connection with temporary injunction application are all tentative findings, made at the interlocutory stage, which is always subject to the final decision of suit pending in the learned court below, to be reached upon considering the cogent evidence, both oral and documentary, to be adduced by the parties to this case. That being the position, the apprehension suffered by the petitioners is without any objective satisfactions.

Since both the parties have entered their respective appearance in the trial court, the pending suit and interlocutory application are known to be ready, to be proceeded further.

That being the position, there is hardly any materials in the impugned order revealing that there has been failure of justice caused by reason of such impugned order of the first lower appellate court. The impugned order, thus, does not call for any interference.

However, the learned court below is directed to dispose of the pending suit and interlocutory application expeditiously as possible, providing sufficient opportunity of hearing to either of the parties to this case, so that logical conclusion of the case may be reached at an early date, without being influenced by the observations, if any made by the first lower appellate court as well as reached during the disposal of temporary injunction under Order 39 Rule 1 and 2 C.P.C. by the trial court.

It is, thus, clarified that independent decision in context with the evidence, to be adduced, is extremely necessary for resolving the controversy between the parties. In doing such exercise, the learned court below must give precedence to the disposal of interlocutory application, prior to ensuring expeditious disposal of suit.

With the above observations/directions, the instant revisional application stands disposed of.

Urgent certified photostat copy of this order, if applied for, be given to the parties as expeditiously as possible on compliance of all necessary formalities.

(Subhasis Dasgupta, J.)