

09.11.2021
Item No.27
Ct. No.7
CHC
(disposed of)

**C.O.1787 of 2021
(Via Video Conference)**

**Deviprasad Ghosh & ors.
Vs.
Tanumoy Mondal & anr.**

Mr. Srijit Chakrobarty,
Mr. Balaram Sardar,
Mr. Aditya Mondal
...for the petitioners

Mr. Saumyajit Ghosal
...for the opposite parties

Parties are represented by their learned advocates,
names of whom are mentioned at the beginning of
this order-sheet.

The subject-matter of challenge in this revisional
application is against order no.2, dated 18th
September, 2021 and order no.3, dated 21st
September, 2021 declining to consider the put up
petition on 21st September, 2021 and thereby fixing
the matter on the date fixed earlier (16th November,
2021).

Mr. Srijib Chakrobarty, learned advocate for the
petitioners/appellants submits that learned trial
court below disposed of the injunction application
under Order 39 Rule 1 and 2 C.P.C. directing both
the parties to maintain status quo, to which the

petitioners felt aggrieved, and preferred an appeal being Misc.Appeal No.99 of 2021.

Mr. Chakrobarty, adverting to page no.102, annexed with the instant revisional application, submits that concrete structure has already been completed up to second floor in the subject land, which could not be taken into account by the learned trial court, while disposing of the application for temporary injunction.

It is further contended by Mr. Chakrobarty that non consideration of put up petition intending to move a stay application on 21st September, 2021, by the first lower appellate court, and thereby fixing the matter ignoring the urgency, sought to be established by the petitioners, would amount to rejection of the prayer for stay application at the ad interim stage.

Mr. Saumyajit Ghosal, learned advocate representing the opposite parties/plaintiffs submits that first lower appellate court in connection with the pending Misc.Appeal has not gone into the merits of the stay application, and as such there lies nothing to be interfered with at this stage.

The situation is thus very clear that petitioners/appellants have already preferred an appeal being dissatisfied with the order of injunction granted by the trial court with a direction upon both parties to maintain status quo.

Upon referring the extent of construction already reached in the subject land, the petitioners sought to move a stay application before the first lower appellate court for the urgency of the circumstances which, however, could not be taken up by the first lower appellate court for the reasons best known to the first lower appellate court, but rather scheduled the date on 16th November, 2021.

In such conspectus, the Court is of the view that that revisional application may be disposed of directing the first lower appellate court to hear the stay application either on the date scheduled by the first lower appellate court (16th November, 2021), or if for any reasons whatsoever the same could not be done, the stay application may be peremptorily heard out within seven days thereafter providing sufficient opportunity of hearing to either of the parties to this case, but without granting unnecessary adjournment and also taking into account the extent of construction already reached in the suit land.

This order is passed without prejudice to the rights and contention of the parties and also without going into the merits of the case, which is, however, left to be decided by the first lower appellate court.

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

All parties shall act in terms of copy of this order downloaded from the official website of this Court.

(Subhasis Dasgupta, J.)