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Ct. 18
02.03.2022

**C.O. No. 241 of 2022
(Via Video Conference)**

Sri Arun Dey @ Arun Kumar De & Ors.

Vs.

**M/s. Fevem Engineers, a partnership firm,
represented by its partners – Sri Mridul Kumar
Dolui & Ors.**

Mr. Debjit Mukherjee,
Ms. Susmita Chatterjee,
Ms. Dipanwita Ganguly,
Mr. Kaustav Bhattacharya ... For the petitioners.

Mr. Haradhan Banerjee,
Mr. Amitava Pain,
Mr. Subhrangshu Datta,
Ms. Manideepa (Paul) Roy ... For the opposite parties.

The petitioners are the defendants of the Title
Suit No. 856 of 2021 pending before the 7th Court of
learned Civil Judge (Junior Division), Howrah.

The learned Trial Judge by a common order
dated December 20, 2021 had disposed of four
applications, out of which two applications were
filed by the plaintiffs whereas the other two were
filed by the defendants.

The applications filed by the plaintiffs were
an application under Order XXXIX Rules 1 and 2 of
the Code of Civil Procedure and an application
under Section 151 of the Code for implementation
of an interim order of injunction passed in the suit
by the police assistance.

The applications filed by the defendants were an application under Order XXXIX Rule 4 of the Code praying modification of the order of injunction and an application under Order XXXIX Rule 7 of the Code for holding local inspection of the suit property.

The learned Trial Judge by the said common order allowed the applications filed by the plaintiffs but dismissed the applications filed by the defendants.

The defendants in the Miscellaneous Appeal No. 134 of 2021 which is now pending before the learned Additional District Judge, Fast Track, Court No. – 2, Howrah challenged one part of the said common order whereby the learned Trial Judge allowed the plaintiffs' application under Order XXXIX Rules 1 and 2 of the Code and dismissed the defendants' application under Order XXXIX Rule 4 of the Code.

The petitioners in the said appeal filed an application praying stay of operation of the orders under challenge.

The Appeal Court below by the Order no. 6 dated January 15, 2022, the impugned order herein, has dismissed the said application.

Mr. Debjit Mukherjee, learned advocate appearing on behalf of the petitioners submits that the appeal Court below has dismissed the said

application for stay on a misconceived notion that the orders under challenge in the said appeal are not appealable inasmuch as the appellants have challenged only the part of the said common order which are open to appeal.

Mr. Haradhan Banerjee, learned senior counsel appearing on behalf of the opposite parties submits that the reasons recorded by the Appeal Court below in dismissing the said application may be faulted but prayer of the petitioners for stay of operation of the order under challenge in the said miscellaneous appeal, if allowed at this stage, would be amounting to allowing the appeal itself before its decision on merit, therefore, the appeal Court below is absolutely justified in dismissing the said application.

Heard learned counsel for the parties, perused the materials-on-record.

The part of the orders under challenge in the said miscellaneous appeal being orders passed under Order XXXIX Rules 1, 2 & 4 of the Code are open to appeal under Order XLIII Rule 1(r) of the Code.

It is rightly submitted by Mr. Banerjee that allowing the prayer of the petitioners for stay of operation of the order of injunction under challenge in the said appeal during its pendency would be

amounting to allowing the appeal itself at the initial stage.

This Court although does not approve of the reasoning of the Appeal Court below in dismissing the said application, but the conclusion being correct, is not inclined to interfere with order impugned herein.

C.O. 241 of 2022 is disposed of with a request to the Appeal Court below to expedite the disposal of the said appeal and in doing so, shall not entertain prayer of the parties for any unnecessary adjournment. 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 with all requisite formalities.

(Biswajit Basu, J.)