

(08)
31.03.2022
(p.jana)

IN THE HIGH COURT AT CALCUTTA
CIVIL REVISIONAL JURISDICTION

CO No. 399 of 2022
(IA No: CAN 1 of 2022)

Amit Ganguly
-versus-
Ramen Goswami & ors.

Mr. Devajyoti Barman,
Ms. Sanjukta Basu Mallick,
... for the petitioner.

Mr. Souradip Banerjee,
Mr. Rajib Ghosh, For the opposite parties.

Affidavits of service filed on behalf of the
petitioner in Court today be kept with the record.

The revisional application although has
appeared in the list for “Extension of Interim
Order” but by the consent of the parties, the
matter is taken up for final disposal.

The defendant in a suit for mandatory
injunction is the petitioner of the present
application under Article 227 of the Constitution of
India which is directed against the order dated
February 01, 2022 passed by the 2nd Court of
learned Civil Judge (Junior Division), Baruipur,
District: 24 Parganas (South) in Misc. Case No. 49
of 2021 arising out of Title Suit No. 283 of 2020.

The plaintiffs/opposite parties, alleging
violation of the order of injunction passed in the
suit, has initiated a proceeding under Order
XXXIX Rule 2A of the Code of Civil Procedure

registered before the learned Trial Judge as the aforesaid Misc. Case No. 49 of 2021. In the said misc. case, the plaintiffs/opposite parties filed an application under Order XXXIX Rule 7 of the Code for holding local inspection of the suit property.

The learned Trial Judge by the order impugned has allowed the said application ex-parte.

The only grievance of the petitioner is that when he has already appeared in the suit, the said application should not have been disposed of without giving him a notice.

The application under Order XXXIX Rule 2A of the Code although has been registered as a separate misc. case but it would be too technical to hold that without service of summons, the appearance of the petitioner in the said misc. case cannot be construed in spite of his appearance in the connected suit.

The order impugned is set aside only on the ground that the petitioner is seeking an opportunity to contest the said application.

It is made clear that the appearance of the petitioner in the suit shall be his appearance in the said misc. case.

It is further made clear that this Court has not gone into the merit of the said application; it is

for the learned Trial Judge to decide the same afresh in accordance with law.

The petitioner is permitted to file written objection to the said application under Order XXXIX Rule 7 of the Code within seven days from date; reply thereto, if any, be filed by the plaintiffs within three days from the date of receipt of the copy of such written objection.

The learned Trial Judge shall make all endeavour to dispose of the said application as expeditiously as possible, preferably within one available effective working month of his Court from the date of communication of this order and in doing so shall not grant any unnecessary adjournment to either of the parties.

The revisional application being CO 399 of 2022 is disposed of on the above terms.

In view of disposal of the revisional application, the application for extension of interim order being IA No: CAN 1 of 2022 has become infructuous and is dismissed accordingly.

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.)