

02.03.2022
Item No.24
Court No.18
AJ.

C.O. 439 of 2022

(Through Video Conference)

Srimanta Ganguly
-Vs-
Tapati Chandra & Ors.

Mr. Tanmoy Mukherjee,
Mr. Souvik Das,
Mr. K. Raihan Ahmed,
Mr. Rudranil Das.
....for the petitioner.

Mr. Rajdeep Bhattacharya,
Mr. S. Dutta.
....for the opposite parties.

The defendant no.1 of the Title Suit No. 225 of 2007 pending before the Additional Court of learned Civil Judge(Junior Division), Hooghly is the petitioner of the present application under Article 227 of the Constitution of India.

The learned Trial Judge by the Order No. 114 dated November 25, 2021 permitted the petitioner to continue with the construction work on the 1st floor of the suit property at his own risk subject to the final decision in the suit.

The plaintiffs/opposite parties assailed the said order in revision under Section 115A of the Code of Civil Procedure being Civil Revision Case No. 7 of 2021 before the learned District Judge, Hooghly.

The petitioner filed an application for dismissal of the said revisional application on the ground that it is not maintainable.

The grievance of the petitioner is that the learned District Judge has kept the said application pending on the ground that a writ petition challenging the 'stop work' notice issued by the concerned Municipality is pending before the High Court.

Section 115 of the Code is the High Court's power of revision, to vest similar power of revision with the District Court, Section 115A has been inserted in the Code after Section 115 in its application to the State of West Bengal vide West Bengal Act XV of 1988 with effect from February 01, 1989.

A proviso has been inserted in Section 115(1) of the Code by the Civil Procedure Code (Amendment) Act, 1999 with effect from July 01, 2002.

The said proviso restricts the power of revision for the High Court and the District Court only in respect of an order deciding any issue in the course of the suit or other proceeding which, if had been decided in favour of the party applying for revision would finally dispose of the suit or other proceeding.

The order under challenge in the connected revisional application does not qualify the test of said proviso, as such, the said revisional application is not maintainable on the face of it.

In view of the discussion made above, there is no necessity to keep the said revisional application pending.

Civil Revision Case No. 7 of 2021 pending before the learned District Judge, Hooghly is dismissed as not maintainable.

The revisional Court below is requested to record formal order of dismissal of the said revisional application upon production of a copy of this order.

It is made clear that this order will not prevent the plaintiffs/opposite parties to challenge the order impugned in the said revisional application in accordance with law, if so advised.

C.O. 439 of 2022 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.)