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C.O. 500 of 2022

**Sasanka Sekhar Khanra
Vs
Debasish Khanra & Ors**

Ms. Indrani Pal, ... For the petitioner.

The subject matter of challenge in this revisional application is against the appellate judgment in Misc. Appeal No. 24 of 2016 (Regn. No. Misc Appeal No. 06 of 2015) affirming the judgment and order dated 28th September, 2015, passed by learned Civil Judge (Senior Division), 2nd Court, Contai, Purba Medinipur, dismissing the J. Misc Case under Order 39 Rule 2A of the Code of Civil Procedure.

Ms. Indrani Pal, learned advocate appearing for the petitioner/defendant submits that after being emboldened by the order of ad interim order of injunction, the opposite parties/plaintiffs indulged in collecting building materials in some portion of the suit property, mentioned in the schedule to the plaint, for the purpose of raising construction in violation of the ad interim order of injunction. Since there has been violation of ad interim order of injunction, the petitioner/defendant filed an application under Order 39 Rule 2A of the Code of

Civil Procedure, for the desired relief as provided under Code of Civil Procedure.

Civil Judge (Senior Division) referred above in connection with J Misc Case No 02 of 2014, dismissed the alleged violation of injunction order, upon collection of as many as 6 witnesses, and also considering several documents, marked as exhibits.

The appeal was then carried against the decision of the J. Misc Case No. 02 of 2014 by preferring Misc Appeal No. 24 of 2016, before the learned Additional District Judge, Fast Track I, Contai, Purba Medinipur. The First Lower Appellate Court dismissed the appeal affirming the order of the Trial Court.

Learned advocate for the petitioner is fair enough to submit that in the meantime, the application for temporary injunction has already been disposed of, and against which there has been no appeal carried uptil date.

To show the exact position of the suit property, there has been local inspection of the suit property. At the time of holding local inspection, learned advocate representing petitioner/defendant was present, and he raised objection with regard to the alleged violation of the injunction order.

Till date, according to the learned advocate for the petitioner, the report of the learned inspection

commissioner has not yet been accepted.

The only contention expressed by the petitioner is against the alleged violation of ad interim order of injunction by the plaintiffs, who were already favoured with the ad interim order of injunction.

After the dismissal of Misc Appeal, there is hardly anything left to reveal the express perversity in the impugned order, occasioning thereby the failure of justice, without which there is hardly any scope for interference under Article 227 of the Constitution of India.

However, when the report of the local inspection commission has not yet been accepted, and when at the time of holding local inspection, learned advocate representing the defendant raised specific objection with regard to the alleged violation of the ad interim order of injunction, the revisional application may be disposed of giving liberty to the petitioner to raise such points, now raised at the time of acceptance of learned inspection commissioner's report. If any such point, as disclosed hereinabove, is raised, the same may be resolved by the Court below in accordance with the provisions of law, providing sufficient opportunity of hearing to either of the parties to this case.

With this observation and direction, the revisional application stands disposed of.

Urgent photostat certified copy of the order, if applied for, be given to the parties on usual undertakings.

(Subhasis Dasgupta, J)