

04.05.2022
Item No.10
Ct. No.7
CHC
(disposed of)

**C.O.550 of 2022
(Via Video Conference)**

**Ruma Das & anr.
Vs.
Purnima Biswas & ors.**

Mr. Sabyasachi Mukherjee, (in virtual mode)
Mr. Bibek Dey
...for the petitioners

Mr. Mukherjee, learned advocate appearing in virtual mode satisfies the Court that he is having comorbidity at the moment, and as he has undergone surgery few days before, he should be permitted to appear in virtual mode.

Upon satisfying the extent of comorbidity, as disclosed by Mr. Mukherjee, he may be permitted to ensure his appearance in virtual mode. Link as such may be given.

The subject-matter of challenge in this revisional application is against the rejection of a prayer for stay in Misc.Appeal No.38 of 2021 of learned Additional District Judge, 2nd Court, Barrackpore.

Admittedly, petitioners/defendants have been suffering ad interim order of injunction granted by the trial court in Title Suit No.201 of 2021 of learned Civil Judge (Junior Division), 1st Court, Barrackpore.

A direction was there directing petitioners not to change the nature and character of the suit property, or encroach the suit property till the date stipulated in the order.

The petitioners felt aggrieved, and carried the ad interim order of injunction in appeal, vide Misc.Appeal No.38 of 2021. The prayer for stay, proposed by the learned advocate for the petitioners, was, however, refused by the first lower appellate court.

There is a claim of raising construction on the independent land possessed either of the parties to this case. Both the parties have raised allegations against each other, that they have raised construction violating the provisions of law, and thus, encroached each others land.

True it is, that the opposite party immediately after having suffered ad interim order of injunction have challenged the same preferring Misc.Appeal. But no separate application for vacating the injunction order under Order XXXIX Rule 4 C.P.C. has yet been filed.

The subject-matter of challenge in the pending Misc.Appeal is on the issue of alleged encroachment. Though the learned advocate appearing for the petitioner has submitted that the say petition has been erroneously decided without adhering to the settled proposition of the law, but when the appeal is pending, wherein subject of ad interim order of injunction is

under challenge, the Court is of the view that the first lower appellate court would surely address the point, now raises, and resolve the issue rendering decision in accordance with the provisions of the law.

Petitioners are at their liberty to raise all such points before the first lower appellate court, and if all such points are raised, the same shall be addressed to by the first lower appellate court in accordance with the provisions of the law, and decide those issues providing sufficient opportunity of hearing to either of the parties to this case.

Since petitioners have been suffering ad interim order of injunction, wherein there is claim and counter claim of raising construction and encroachment on respective land it is desirable in the given circumstances of the case, that the appeal should be expeditiously disposed of, without granting unnecessary adjournment, unless it is extremely unavoidable.

While endeavouring such exercise, the first lower appellate court may decide the appeal is expeditiously as possible, preferably within ten (10) weeks from the date of communication of this order.

Petitioners are directed to make communication of this order to the learned court below as well as to the learned advocate appearing in the court below for the opposite parties and opposite parties.

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

Urgent certified photostat copy of this order, if applied for, be given to the parties as expeditiously as possible on compliance of all necessary formalities.

(Subhasis Dasgupta, J.)