

13.04.2022

Sl. No. 23

Court No. 7

B.M.

C.O 807 of 2022

Soleman Khan

Vs.

Md. Yusuf Ansari

Mr. Debasis Sur

Mr. Goutam Debnath ... for the petitioner

Mr. Rabindranath Mahato

Mr. Aritra Shankar Ray ... for the opposite party

Petitioner assails appellate judgement passed in Misc. Appeal No.15 of 2022 reversing the order dated 12th January, 2022 passed by the learned Civil Judge, Junior Division, First Court, Howrah in T. S No.1255 of 2021 rejecting the prayer for temporary injunction under Order 39 Rule 1 & 2 of CPC.

Admittedly, in a suit for declaration of tenancy right with a prayer for restoration and other consequential relief, prayer for injunction was refused by the learned court below. Against the refusal for prayer for temporary injunction an appeal was then carried by Misc. Appeal No.15 of 2022. The first appellate court allowed the appeal restraining the petitioner from raising any construction in the suit property without making accommodation or arrangement for the plaintiff/opposite party/caveator in the proposed construction.

Learned advocate for the petitioner contends that by the impugned order, construction already conducted over the suit property may not be proceeded, and as such, proposes for granting protection so that the pending construction may be continued.

Per contra Mr. Rabindranath Mahato, learned advocate appearing for the opposite party/plaintiff disputing with the submission of the learned advocate for the petitioner, submits that taking advantage of temporary absence of the petitioner/opposite party/tenant, the entire building has been demolished and construction has been raised over the suit property. To seek redressal, petitioner has sought for declaration of his tenancy right, recovery of possession together with other consequential relief.

Upon perusal of the impugned order, it appears that a direction has been thereby the last appellate court in Misc. Appeal requiring the petitioner to make accommodation and/or arrangement for putting up the opposite party/plaintiff in the proposed construction.

No express perversity is shown in the order impugned occasioning thereby a failure of justice.

Since, injunction application has already been disposed of by the court below, the point now sought to be raised, may be raised before the learned court below at the time of final hearing of the suit, and as such, the suit

may be expedited so that logical conclusion of the suit may be reached within best possible time. While endeavouring expeditious disposal, there should not be any unnecessary adjournment granted, unless it is extremely unavoidable.

Revisional application is, thus, 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)