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C.O. 1048 of 2022

**Sri Bulan Karuri @ Ritesh Karuri
Vs
Mrs. A. K. Augustine & Anr**

Mr. Animesh Paul, ... For the petitioner.

Ms. A. K. augustine (in person)
... For the Opposite parties.

The subject matter of challenge in this revisional application is against an appellate decision passed in Misc Appeal No. 16 of 2021 of learned District Judge, Howrah thereby granting ad interim order of injunction.

Admittedly, in a suit for declaration and injunction, the prayer for ad interim order of injunction was rejected by the Trial Court. Against the rejection of the prayer for ad interim order of injunction, an appeal was then carried vide Misc Appeal No. 16 of 2021. The appellate Court upon ascertaining the tests of granting ad interim order of injunction, fundamentally granted ad interim order of injunction, prima facie, being satisfied with the urgency of the circumstances.

Mr. Animesh Paul, learned advocate appearing for the petitioner/defendant submits that the First Appellate Court vide Misc Appeal No. 16 of 2021 has gone into the points, beyond the peripheries of the

suit, requiring decision from the Trial Court, which is contrary to the law.

It is also contended by the learned advocate for the petitioner that by reason of ad interim order of injunction granted by the Lower Appellate Court, petitioner has been put to suffer serious consequence and has been facing immense hardship.

It is also submitted that the Act referred in the subject of dispute has no application, and as such the First Lower Appellate Court is not authorised to grant any ad interim order of injunction, against the rejection of ad interim order of injunction by the trial Court.

Ms. A. K. Augustine, appears today in-person for the opposite parties/plaintiffs, upon receiving copy, supplied already by the learned advocate for the petitioner, for the proper address of the issue involved in this case.

As per submissions disclosed by the learned advocate for the opposite parties, the core allegation raised against the petitioner is that portion of the suit property, principally for residential house, has been converted into commercial use, by substituting a garage into a gym. It is also contended that by such conversion of garage into gym, the ingress and egress to the occupants of the flat have been interfered with.

Admittedly, the misc appeal is pending, and the

point now raises by the petitioner/appellant may be gone into by the Lower Appellate Court, while disposing of the Misc Appeal finally.

Since, Misc appeal is pending, there is every possibility of a fair decision in accordance with the provisions of law against the rejection of ad interim order of injunction by the Trial Court.

That being the position, all points are left open for decision by the Lower Appellate Court, and accordingly liberty is given to the petitioner to raise all such points, now raises, before the First Lower Appellate Court, and if all such points are raised, that shall be resolved within the scope of Misc Appeal, against the rejection of the prayer for ad interim order of injunction, in accordance with the provisions of law, providing sufficient opportunities of hearing, but without granting unnecessary adjournment.

It is gathered knowledge that 17th May, 2022 is the next date fixed for hearing of this Misc Appeal.

That being the position, this would not however, prevent the Court below to decide the appeal finally in accordance with the provisions of the law, and if for any reasons, the same could not be done, the appeal may be decided within six weeks thereafter peremptorily.

This order is passed without going into the

merits of the case.

It is however, clarified that the First Lower Appellate Court will be free to decide the Misc Appeal independently, subscribing reasons in terms of the points to be raised before the First Lower Appellate Court.

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)