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18.01.2022
(p.jana)

**IN THE HIGH COURT AT CALCUTTA
CIVIL REVISIONAL JURISDICTION**

(Via Video Conference)

CO No. 905 of 2021

**Zubaida Hamid
-versus-
Sunil Shaw**

Mr. Wasim Ahmed,
... for the petitioner.
Mr. Kaushik Dey,
Mr. Mrityunjoy Saha, ... for the opposite party.

The revisional application under Article 227 of the Constitution of India is directed against the order no. 03 dated March 18, 2021 passed by the learned District Judge-in-Charge, District: 24 Parganas (South) at Alipore in Misc. Appeal No. 59 of 2021.

The petitioner being the plaintiff/decreed-holder put the decree passed in Ejectment Suit No. 39 of 2005, giving rise to the Execution Case No. 10 of 2016 before the 2nd Court of learned Civil Judge (Junior Division) at Alipore, District: 24 Parganas (South).

In the said execution case the petitioner has filed an application for grant of police help to execute the said decree. The said application has been registered before the Executing Court as Misc. Case No. 208 of 2017.

The opposite party in the said miscellaneous case has filed an application for injunction. The Executing Court by the order dated February 15, 2021 has kept the said application on record.

The opposite party treating the said order as deemed refusal of his prayer for an ad interim order of injunction on the said application has preferred the connected Misc. Appeal No. 59 of 2021.

The Appeal Court below by the order impugned has passed an ad interim order of injunction directing the petitioner not to disturb the peaceful possession of the opposite party in respect of the suit property measuring about 10 cottahs of land at Premises No. 168A of Tiljala Road, P.S.- Karaya, Kolkata- 700 046 till April 05, 2021.

Mr. Wasim Ahmed, learned Counsel appearing on behalf of the petitioner, submits that the opposite party is not a party to the Misc. Case No. 208 of 2017, therefore, cannot maintain an application for any interim relief in the said Misc. Case, far less an appeal from an order of deemed refusal of his prayer for an ad interim order of injunction.

Mr. Kaushik Dey, learned Counsel for the opposite party, responding to the said argument of Mr. Ahmed submits that an application for addition of the opposite party in the said misc. case is pending.

Mr. Ahmed is right in his submission, so long the prayer of the opposite party for being added in the said misc. case is allowed, he cannot maintain an application for any interim relief pending disposal of the said misc. case.

The order impugned therefore is not sustainable and is accordingly set aside.

The application filed by the opposite party for his addition in the Misc. Case No. 208 of 2017 be disposed of

first and thereafter the said misc. case be disposed of in accordance with law as expeditiously as possible and in doing so the Executing Court shall not allow the prayer of the parties for any unnecessary adjournment.

In the event, the prayer of the opposite party for being added in the said misc. case, he will be entitled to renew his prayer for an ad interim order of injunction on the application already filed.

In view of this order, there is nothing remains to be decided in the connected Misc. Appeal No. 59 of 2021. The said appeal therefore along with all pending applications thereto are treated to be disposed of.

It is made clear that this Court has not gone into the merit of the respective cases of the parties, the order impugned has been set aside only on the ground indicated above, all points therefore are kept open.

CO 905 of 2021 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 of all requisite formalities.

(Biswajit Basu, J.)