

21.06.2022
Item No.4
Ct. No.7
CHC
(disposed of)

C.O. 1184 of 2022

**Kamal Das & anr.
Vs.
Arup Dandapath**

Mr. Tanmay Mukherjee,
Mr. Anindya Sundar Das,
Ms. Avipsa Sarkar Chatterjee,
Mr. Souvik Das
...for the petitioners

Mr. Sourav Sen,
Mr. Rajib Acharyya
...for the opposite party

The subject of challenge in this revisional application is against the order dated 30th November, 2021, granting stay of operation of the order passed by the trial court directing both the parties to maintain *status quo* in respect of the nature, character and possession of the suit property till disposal of the suit.

Mr. Mukherjee, learned advocate appearing for the petitioners submits that all subsequent orders granting extension of interim order by the first lower appellate court in Misc.Appeal No.06 of 2021 are under challenge in this case.

It is contended by the learned advocate for the petitioners that the order granting stay has been passed without assigning any reasons, and without offering any opportunity of hearing to petitioners. The

order directing *status quo* to be maintained by both the parties was passed by the trial court in connection with an injunction hearing under Order 39 Rule 1 and 2 C.P.C., which was disposed of by the learned trial court in a contested manner.

Mr. Mukherjee submits that normally no stay of operation of the order against the order granting temporary injunction should be made in a case, where injunction application under Order 39 Rule 1 and 2 C.P.C. has been disposed of by the learned court in a contested manner.

It is, thus, submitted by Mr. Mukherjee that granting stay unilaterally by the first lower appellate court without offering an opportunity of hearing to the petitioners, would result practically in allowing the appeal itself at the initial stage, without hearing the other side.

Mr. Sen, learned advocate appearing for the opposite party at the very threshold of this case disputes with the maintainability of instant revisional application submitting that unless all subsequent orders, passed by the first lower appellate court extending the interim order are challenged in this revisional application, the present revisional application would not be maintainable.

Incidentally, Mr. Sen submits that extension of interim order of stay was granted by the first lower appellate court lastly on 31st May, 2022, and the court below has fixed date on 28th June, 2022 for furnishing reply to the show-cause made against the petitioners.

Mr. Sen further submits that same issue was raised before the coordinate Bench of this Court in C.O.3762 of 2018, when the same was referred to the Larger Bench for decision.

At the same time, though there has been reference on such issue to be decided by the Larger Bench, but the pending appeal was directed to be disposed of expeditiously.

While making elaboration of such issue, Mr. Sen submits that when date has been fixed before first lower appellate court, the entire appeal may be directed to be expeditiously disposed of, and in the event of expeditious disposal of this appeal, the entire matter in controversy between the parties may be streamlined.

It is also submitted by Mr. Sen that the stay order granted by the first lower appellate court has not been utilized in wrong perspective.

Having considered the submission of both sides, it appears that the prayer for temporary injunction was disposed of trial court in a contested manner directing

both the parties to maintain *status quo* in respect of nature, character and possession of the suit property till disposal of the suit. Admittedly, such injunction order was granted in a pending partition suit. The subject of controversy surfaced at this stage is that taking advantage of stay order being granted by the first lower appellate court, the o.p. has indulged in raising construction on some advantageous portion of the suit property, and that too beyond the extent of the alleged share held by the opposite party.

Mr. Sen strongly denies against such contention raised by Mr. Mukherjee, alleging construction to have raised by the opposite party upon misutilizing the order of interim stay granted by the first lower appellate court.

Upon perusal of the impugned order, it appears that though the court below was cognizant about the order of *status quo* granted in connection with prayer for temporary injunction, with respect to nature, character and possession of the suit property, but while granting stay against such order of injunction, which was recorded after providing a contested hearing, omitted to assign any reasons for such stay order.

True it is that it is the ordinary practice that whenever an injunction matter is disposed of in a

contested manner, an opportunity of hearing should be extended to the other side in Miscellaneous Appeal being preferred, unless there are convincing, cogent and compelling reasons are set out by the party proposing for grant of interim stay against injunction order for the urgency of the circumstances.

When the court below has already fixed date for hearing, and when Mr. Mukherjee appearing today in Court assures this Court that petitioners are willing to participate in the hearing process of Misc.Appeal and surely participate in the pending appeal, in that event, the controversy thus raised by either of the parties to this case should not be addressed by this Court, and it is left to be decided by the court below in Misc. Appeal giving a hearing for the purpose.

Since the order impugned was passed with recording any conscious reasons of the court below, the same should not be allowed to be continued any more.

Accordingly, the same is set aside with a direction upon the court below to hear out the stay petition afresh, providing an opportunity of hearing to the petitioners, but without granting any unnecessary adjournment, unless it is extremely unavoidable.

However, this would not prevent the court below to finally dispose of the Miscellaneous Appeal either on

the next date fixed, or if for any reasons whatsoever, there could not be any effective hearing taken place in the court below on the scheduled date, the Miscellaneous Appeal may be peremptorily disposed of within a fortnight thereafter.

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.)