

22.06.2022
item No.35
n.b.
ct. no. 07

C.O. 1401 of 2022

Smt. Sima Dutta & Anr.

-Vs-

Durga Sankar Nandi & Ors.

Mr. Kushal Chatterjee,

Mr. Mukesh Kumar Gupta

.... For the petitioners.

Mr. Tanmoy Mukherjee,

Mr. Sankar Halder,

Mr. Souvik Das

... for the opposite party No. 1 to 3.

The subject matter of challenge in this revisional application is against an order dated April 26, 2022 passed in Misc. Appeal no.08 of 2019 of Learned Additional District Judge, Fast Track Court III, Barasat, arising out of Title Suit No.1063 of 2018, directing issuance of summons upon respondent no.3 by both ways.

Admittedly, the trial court declined to pass ad interim order of injunction, and an appeal was then preferred against the refusal of ad interim order of injunction.

In Misc. Appeal, so preferred by the plaintiffs/opposite parties, an ad interim injunction was granted directing both the parties to maintain *status quo*.

The litigation pending between the parties is directed against cancellation of Deed, the execution of which is under challenge.

Mr. Chatterjee, learned advocate appearing for the petitioners submits that the referred Miscellaneous Appeal was posted for hearing, and the date was fixed for delivery of judgement. On the date fixed for delivery of judgement, the first lower appellate body, instead of delivering the judgement proceeded to pass an order requiring service of summons upon the respondent no.3/pro-defendant no.3, which according to first learned appellate court escaped its notice at the time of granting ad interim injunction.

Mr. Chatterjee contends that the first lower appellate court in routine manner has been extending ad interim order resulting in serious prejudice to the petitioners/defendants.

Mr. Chatterjee further submits that though no relief is proposed to be obtained, as against the respondent no.3, but simply she has been made as pro-defendant. Upon advertng to order dated 25th January, 2019 in First Miscellaneous Appeal No.8 of 2019, Mr. Chatterjee also submits that ad interim order of was however, granted against respondent nos.1 and 2, but not against the pro-defendant/respondent no.3.

It is thus contended by petitioner that the first lower appellate court ought to have delivered the judgement

upon permitting the petitioner to seek for dispensation of service, as against respondent no.3.

Per contra, Mr. Tanmoy Mukherjee, learned advocate for the Caveators/opposite parties submits that the execution of the deed is under challenge before the Trial Court. While making elaboration of such issue, Mr. Mukherjee submits that the purported deed was executed, while executor was admitted in the hospital.

Mr. Mukherjee, learned advocate further submits that in the event of the purported deed being cancelled, the right of inheritance of respondent no.3 would be there, so, there cannot be any order permitting the petitioner to claim for dispensation of service as regards respondent no.3, though no relief has been proposed to be obtained as against her.

Having considered the submission of both sides it appears that previously the Misc. Appeal was heard out providing an opportunity of hearing to the contesting parties, and the date was fixed for delivery of judgment. The Misc. Appeal was preferred in the year 2019. Since then the petitioners/defendants have been suffering ad interim order of injunction.

While making extension of an interim order, granted by any Court, the same should not be granted mechanically in a routine manner. There should be an effective hearing in terms of the materials disclosed in the

petition proposing extension of interim order, after giving an opportunity of hearing to the other side.

Upon consideration of the materials placed on record, together with submissions disclosed by both the parties, it appears that expeditious disposal of the pending appeal would, however, streamline the issue now raised before this Court.

The revisional application is thus disposed of directing the First Appellant Court to ensure expeditious disposal of the pending appeal, preferably within the period of 10 (Ten) weeks from the date of communication of this order, after exhausting the process available in the Code of Civil Procedure for service as regards the respondent/pro-defendant.

This would not, however, prevent the petitioners to apply for dispensation of service, as against the respondent no.3 before the First Appellate Court, and if any such application is filed by the petitioners, the same shall be decided in accordance with law giving an opportunity of hearing to the other side.

The petitioners are directed to communicate the order to the Learned Court below.

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.)