

21 24.06.
2022

AGM
/RKB
Ct
07

C.O. 1430 of 2022

**Nishakar Dhara & Anr
Vs
State of West Bengal & Ors**

**Mr. Barindra Narayan Roy,
Ms. Saachi Agarwal, ... For the petitioners.**

**Mr. Ayan Banerjee,
Ms. Debasree Dhamali,
... For the opposite party No. 1.**

Mr. Mihir Kundu, ... For the opposite party No.2.

The subject matter of Challenge in this revisional application is against the order dated 29th April, 2022 passed by learned District Judge, Purba Burdwan keeping the injunction application pending for hearing upon notice to the caveators/respondents.

Learned advocate appearing for the petitioners/appellants submits that during the Covid scenario, the injunction application could not be moved before the Trial Court, despite urgency of the circumstances.

Though there has been some delay caused to move the injunction application before the Trial Court, but the same was refused by the Trial Court declining to grant any injunction. Against the refusal to grant injunction, an appeal was then carried vide Misc Appeal No. 13 of 2022.

Learned advocate appearing for the petitioners

contends that the urgency of the circumstances was focussed before First Lower Appellate body, but in spite of being cognizant of the circumstances presented and pressed, the Court below declined to pass any order of injunction, because of a caveat being lodged by the opposite parties/respondents.

The Court below, however, fixed date on 24th June 2022 for taking up injunction application for hearing.

At the time of hearing, learned advocate appearing for the petitioners produces a document dated 8th June, 2022 issued by Block Land and Land Reforms Officer, Jamalpur, Purba Burdwan directing appellant to deliver vacant possession of subject property to one Animesh Ghosh.

It is thus proposed that when there has been a direction to hand over possession of the subject property, urgency of the circumstances, is once again enforced.

Mr. Ayan Banerjee, learned advocate appearing for the opposite party No. 1 and Mr. Mihir Kundu, learned advocate appearing for the opposite party No. 2 dispute with the submissions made by learned advocate for the petitioners submitting that present application is not maintainable.

Having considered the submissions of both sides, it appears that the petitioners are aggrieved

with the order of Court below for keeping the injunction application pending, without giving effective hearing for the purpose. The document now produced by the petitioners admittedly could not be produced either before the Trial Court, or before the First Lower Appellate Court. When the document has not been produced before the Trial Court, and subsequently to the appellate Court, the same cannot be looked into at this stage, and that too in exercise of the power available under Article 227 of the Constitution of India.

Upon perusal of the impugned order, it appears that there has neither been effective rejection of the prayer for injunction, nor any order-granting injunction, favourable to the purpose to the petitioners.

In a situation like this, the injunction application needs to be heard out expeditiously in connection with the referred misc appeal.

Neither any jurisdictional error is found to have committed in the impugned order, nor any express perversity is shown in the order, so as to interfere with the order impugned.

However, the revisional application is disposed of directing learned District Judge, Purba Burdwan in Misc Appeal No. 13 of 2022 to hear out the injunction application within a fortnight from the date of

communication of this order, providing sufficient opportunity of hearing to either of the parties to this case.

This would not, however, prevent the petitioner from producing the document, now produced, so that the entire facts and circumstances may be best considered by the First Lower Appellate Court in connection with proposed prayer for injunction.

Petitioners are directed to make communication of this order to the learned court below as well as to the learned advocate appearing in the court below for the opposite parties and the opposite parties.

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)