

02.08.2022
Item No.18
Ct. No.7
CHC
(disposed of)

C.O.1591 of 2022

**Md. Mustakim Biswas @ Islam & ors.
Vs.
Katakopara Rural Educational Society rep. by its
Secretary Ayenul Haque**

Mr. Pankaj Halder,
Mr. Razzak Hossain
...for the petitioners

The petitioners assail order no.5 dated 31st March, 2022, passed in Misc.Appeal No.40 of 2021, granting interim order restraining petitioners from entering into the suit property, and from creating any disturbance in the smooth running of the institution till certain period of time.

Admittedly, an interim order was granted in Misc.Appeal giving some protection to the appellant/opposite party.

Learned advocate appearing for the petitioners at the very threshold of this case disputes with the maintainability of the suit in which, the interim protection has been granted by the first lower appellate court, referred above.

It is contended by the learned advocate for the petitioners that making suppression of some material facts, the interim protection has been obtained in Misc. Appeal.

Learned advocate for the petitioners strenuously argues that till date, there has been no resolution adopted terminating petitioners/defendants from the society. It is thus contended that the order granting interim protection is not the perfect appreciation of the facts and circumstances of the case surfaced at the moment.

Admittedly, the Misc.Appeal is pending, wherein the petitioners/defendants are made respondents. The undenying position is that the trial court declined to grant any ad interim order of injunction. Refusal to grant ad interim order of injunction was carried in Misc.Appeal No.40 of 2021 pending before the learned District Judge, Murshidabad.

Having considered the submission of learned advocate for the petitioners, it appears that the maintainability of the suit together, suppression of material facts together with some incidental issues are principally involved in this case, which may be best addressed by the first lower appellate body in course of hearing the Misc.Appeal No.40 of 2021.

When it is contended strongly that the suit, in which, interim protection has been granted, is not maintainable, and there has been material suppression of facts, while obtaining interim protection passed by the first lower appellate body, the pending appeal should be disposed of in an expeditious manner.

The revisional application, as such be disposed of directing the first lower appellate body to dispose of the pending Misc.Appeal No.40 of 2021, in an expeditious manner.

Petitioner is given liberty to raise all such points including maintainability of the suit and others, as mentioned hereinabove, at the time of final hearing of Misc.Appeal pending before the first lower appellate body, and if any such point is raised, that shall be resolved by the first lower appellate body giving sufficient opportunity of hearing to either of the parties to this case, but without granting any unnecessary adjournment, unless it is extremely unavoidable.

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

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.)