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C.O. 1895 of 2022

**Smt. Lata Gupta & Anr
Vs
Nasim Parveen & Ors**

Mr. Sibasish Ghosh,
Mr. Pran Gopal Das,
... for the petitioners.

Mr. Swapan Kumar Mallick,
Mr. Dinabandhu Mukherjee,
Ms. Sudeshna Das, ... for the opposite parties.

Two orders dated 27th April, 2022 and 18th May, 2022 are under challenge in this revisional application.

The first one pertains to an order granting local inspection on the prayer of the plaintiff. The second one relates to fixing date under Order 39 Rule 4 of the CPC with a direction upon the commissioner to conduct his commission work on 20th May, 2022 as per order dated 27th April, 2022.

Mr. Sibasish Ghosh, learned advocate appearing for the petitioners/defendants purchased subject property from the husband of the opposite parties. Suddenly the wife of the opposite party filed a suit after ten years of purchase with a prayer for declaration and injunction.

In the suit, an ad interim order of injunction was granted against the petitioners, which was

challenged by the petitioners upon filing a separate petition under Order 39 Rule 4 CPC proposing for vacating the injunction order.

Such application, according to Mr. Ghosh, could not be taken up for hearing, and it was kept deferred after allowing the application filed by the opposite parties praying for local inspection.

It is submitted by the petitioners that appointment of the commissioner, pending decision of an application under Order 39 Rule 4 CPC for vacating the injunction order is bad in law.

Per contra, learned advocate appearing for the opposite parties disputing with submission of Mr. Ghosh replies that for the violation of the ad interim order of injunction, an application for local inspection was filed, which was allowed giving a hearing to both the sides by the Court below.

While holding the commission, a notice was issued by the learned commissioner well in advance, but the petitioners has purposefully avoided taking part to the commission work.

Adverting to para 12 of the instant revisional application, learned advocate appearing for the opposite parties contends that in the mean time the commission work has already been concluded and the commissioner has already submitted his report.

It is further submitted by the opposite parties that when date has already fixed by the Court below for hearing of an application under Order 39 Rule 4 CPC, there lies nothing left for any further adjudication.

Having considered the submission of both sides, it appears that the entire grievance of the petitioners is against the delay being caused by the Court below to take up an application for vacating the injunction application under Order 39 Rule 4 CPC, and also for allowing the application under Order 39 Rule 7 CPC for local inspection prior to the decision of petitioner under Order 39 Rule 4 C.P.C.

Upon perusal of the impugned orders, it appears that learned commissioner has already been appointed. The commission work has already been concluded followed by submissions of commissioner's report.

In a situation like this, the report of the learned inspection commissioner may not be accepted without giving an opportunity of hearing to the petitioners for the purpose.

Petitioners are given liberty to raise objection against the learned Commissioner's report, and the points, if any raised, may be addressed by the Court below, giving a hearing to both the sides, but without

granting unnecessary adjournment, unless it is extremely unavoidable.

The Court is further directed to hear out the vacating application filed by the petitioners under Order 39 Rule 4 CPC within three weeks after Puja vacation of this Court.

This would not, however, prevent the Court below to consider the learned Commissioner's report, if any accepted in the meantime, in accordance with law, while making consideration of application under Order 39 Rule 4 of the CPC.

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)