

31.08.2022
Item No.261ML
Ct. No.7
CHC
(disposed of)

C.O.1917 of 2022

**Sri Anup Kumar Saraf alias Anup Saraf & anr.
Vs.
Shree Balaji Udyog, a partnership firm rep. By its
partners Pradip Kumar Joshi & ors.**

Mr. Pinaki Ranjan Mitra,
Ms. Mohuya Dutta Biswas,
...for the petitioners

Mr. Sukanta Das
...for the o.p. nos.1 and 2

Mr. Saurav Chaudhuri
...for the o.p. no.3

Petitioners assail the order dated 16th June, 2022, passed in Misc. Appeal No.89 of 2022, granting an order of injunction restraining petitioners/respondent nos.1 and 2 from encroaching, or obstructing the southern side front portion of the suit property of the appellants by installing electricity poles or by extending overhead electric line over the same.

Mr. Pinaki Ranjan Mitra, learned advocate appearing for the petitioners submits that the Misc. Appeal was admitted on 13th June, 2022, and on that date, after rejecting the prayer for interim injunction, a notice was directed to be issued requiring respondents to show cause within four days therefrom, but the court below has fixed the date on 16th June, 2022,

which falls short of one day, as mentioned in the order dated 13th June, 2022.

It is further contended by the petitioners that the court below being oblivious of facts as regards service of notice and the returnable date, on which the respondents are supposed to enter their appearance, granted ad interim injunction referred hereinabove on 16th June, 2022, behind the back of the respondents.

It is also submitted by the petitioner that as a result of such injunction order, the factory of the petitioners has been subjected to closure for insufficiency of electricity.

Per contra, Mr. Sukanta Das, learned advocate for the opposite party nos.1 and 2 submits that petitioners have already entered their appearance, which would be evident from the order dated 5th August, 2022, passed in Misc. Appeal No.89 of 2022.

The photocopy of said order, as produced by Mr. Das be taken son record.

Upon referring such copy of the order, learned advocate for the opposite parties submits that when the appeal is pending, this Court should not interfere with the impugned order.

Learned advocate, Mr. Saurav Chaudhuri appearing for the opposite party no.3 submits that by reason of injunction order being granted, the opposite party no.3 is not in a position to ensure electricity

connection on the prayer of the petitioners in their subject property.

Having considered the submission of both sides, it appears that the appeal court granted injunction order on a date, which is allegedly one day before the returnable date. In view of the order dated 5th August, 2022, when the petitioners have already entered their appearance in the pending appeal, this Court is of the view that this Court should not enter into the merits of case to decide the legality of the order at this stage, and it would be better to relegate this matter to the appeal court for deciding the appeal in accordance with the law.

Accordingly, the revisional application stands disposed of directing the court below to ensure expeditious hearing of the pending appeal, providing sufficient opportunity of hearing to either of the parties to this case, but without granting any unnecessary adjournment, unless it is extremely unavoidable.

While endeavouring such exercise, the court below in appeal may take note of the order dated 13th June, 2022, as regards the returnable date, on which the respondents are due to ensure their appearance by reason of its own order dated 13th June, 2022, and proceed with the disposal of the appeal expeditiously, preferably within a period of eight (08) weeks from the date of communication of this order.

This would not however, prevent the court below to prepone the date, if necessary on the prayer of the petitioners upon notice to the other side.

This order is passed without entering into the merits of the case and without prejudice to the rights and contentions of the parties.

Parties are directed to make communication of this order to 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.)