

26.07.2022
SL No.16
Court No.8
(gc)

**FMA 3637 of 2014
CAN 1 of 2014
(Old No: CAN 4573 of 2014)**

**Anima Chanda
Vs.
Asit Kumar Josh & Anr.**

Mr. Samiran Giri,
...for the Appellant.

The appeal is arising out of an order dated 16th April, 2014 passed by the learned Civil Judge, Senior Division, Diamond Harbour, South 24 Parganas in connection with an application filed under Order 39 Rule 1 and 2 read with Section 151 of the Code of Civil Procedure. The plaintiff filed a suit for declaration and permanent injunction. There was some dispute with regard to the identification of the suit property as also the nature of possession of the respective parties in the suit property. The defendant No.1 is an adjacent neighbor. The allegation that the defendants have demolished the existing local gate of the suit plot and are trying to raise illegal construction by taking forceful possession of the suit property is required to be ascertained by the appointment of an Advocate Commissioner. The learned Trial Judge was of the view that the merits of the matter can only be decided in presence of both the parties after submission of Advocate Commissioner's report. The prima facie view

taken by the learned Trial Judge having regard to the nature of the controversy cannot be said to be perverse. The exercise of jurisdiction being discretionary unless we find that the exercise of discretion has been arbitrarily exercised. The First Appellate Court should not interfere with such finding.

However, in view of the submission made on behalf of the plaintiff that the injunction application is pending and the status of the suit shows that 26th September, 2022 is fixed for SR/AD/Appearance, we direct the learned Trial Judge to take up the matter as expeditiously as possible. No plausible explanation could be offered by the learned Counsel for the plaintiff for the matter being pending since 4th February, 2017 till date on account of SR/AD/Appearance.

In the event the plaintiff does not take any steps as directed by the Trial Court, it would be open for the Trial Court to dismiss the application for non-compliance of his direction.

However, in the event the plaintiff has taken all reasonable steps, we would request the learned Trial Judge to dispose of the injunction application on merits as expeditiously as possible without being influenced by the impugned order.

With the aforesaid observation, the appeal and the connected application stand disposed of.

However, there shall be no order as to costs.

Urgent Photostat certified copy of this order, if applied for, be given to the parties on usual undertaking.

(Siddhartha Roy Chowdhury, J.)

(Soumen Sen, J.)