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C.O. 2238 of 2022

**Maa Yata Developers
Vs
Kamarhati Municipality & Ors**

**Mr. Pintu Karar,
Mr. Akashdeep Mukheerjee,
Mr. Pritm Chatterjee, ... For the petitioner.**

**Mr. Tarun Kumar Das,
Mr. Sujit Bhunia,
... For the Intervenor.**

The subject matter of challenge in this case is against the rejection of a prayer for interim stay passed in Misc Appeal No. 5 of 2022 pending before the learned Civil Judge (Junior Division), 2nd Court, Barrackpore.

Admittedly, there has been a demolition order passed by the Chairman, Kamarhati Municipality on the prayer of the complainant alleging violation of municipal rules. There has been an enquiry conducted by Kamarhati Municipality on the basis of the complaint alleging violation of municipal rules.

Upon consideration of the report of the Municipal Engineer, Kamarhati Municipality passed order dated 18th July, 2022 directing demolition of unauthorised construction raised over the disputed property by the petitioner. The order directing demolition of unauthorised construction has been challenged upon filing Misc Appeal referred hereinabove, before the learned Civil Judge (Junior Division), 2nd Court,

Barrackpore.

The Court below declined to pass any interim order of stay in the absence of the other sides with an observation that “effective order can only be passed after hearing of the other side.”

At this stage learned advocate for intervenor wants to intervene in this case, who has already filed an application under Order 1 Rule 10 of the CPC before the pending appeal.

It is gathered knowledge that such application has not yet been disposed of.

As per submission disclosed by the learned advocate for the petitioner that 16th November, 2022 is the date fixed for hearing of stay application, and the connected appeal before the Court below.

Service of appeal upon the opposite parties has already been effected in view of the submission disclosed by the petitioner.

That being the position, it would be improper to exercise the authority of the Court, when there is no jurisdictional error committed by the Court below. When date has already been fixed for hearing of stay application together with Misc Appeal, the revisional application be disposed of directing the Court below to dispose of the stay application providing sufficient opportunity of hearing to both the parties.

The Court below may feel free to dispose of the

intervenor's application, sought to be added in the pending appeal, in accordance with law.

Petitioner is directed to make communication of this order to the learned court below.

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)