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Ct. 18  
08.03.2022

**C.O. No. 3365 of 2019**  
**I.A. No : CAN 1 of 2019 (Old No : CAN 11891 of 2019)**  
(not in file)  
**CAN 3 of 2021** (not in file)  
**CAN 4 of 2022**  
**CAN 5 of 2022**  
**(Via Video Conference)**

**Janmenjay Roy & Ors.**  
**Vs.**  
**Chabi Bhattacharjee & Ors.**

Mr. Somnath Ghoshal,  
Mr. Satyajit Senapati ... For the petitioners.

Mr. Ayan Banerjee,  
Mr. Kinkar Pandit ... For the opposite parties.

The revisional application under Article 227 of the Constitution of India is at the instance of the judgment-debtors for a decree of eviction and is directed against order dated August 03, 2019 passed by the 5<sup>th</sup> Court of learned Civil Judge, (Junior Division), Howrah in Title Execution Case No. 18 of 2016. The connected execution case has been levied to execute the decree passed in Title Suit No. 266 of 1997.

The judgment-debtors in the said execution case filed an application under Order XXXIX Rules 1 and 2 of the Code of Civil Procedure for an order of injunction restraining the judgment-debtors, their men and agents from making any construction/further construction on the decretal

property and from creating any third party interest therein.

The learned Executing Court by the order impugned has allowed the said application.

The grievance of the judgment-debtors is that the said application was disposed of without serving any copy to them and without giving them any opportunity to contest the said application.

The order impugned was passed ex parte, therefore for the ends of justice the judgment-debtors are entitled to an opportunity to contest the said application.

C.O. 3365 of 2019 is disposed of by by requesting the Executing Court to decide the said application afresh in accordance with law after giving the judgment-debtors an opportunity to contest it and till the disposal of the said application, there shall be an ad interim order of injunction restraining the judgment-debtors from parting with the possession of the decretal property and/or creating any third party interest therein and/or changing the nature and character of it.

The order impugned is modified to the extent indicated above.

It is however made clear that the Executing Court shall dispose of the said application without being influenced by the fact that this Court has

retained the order of injunction till the disposal of the application.

In view of the nature of the said application, it is expected that the learned Executing Court shall make all endeavour to dispose of the said application expeditiously as possible.

The connected applications being I.A. No : CAN 1 of 2019 (Old No : CAN 11891 of 2019), CAN 3 of 2021, CAN 4 of 2022 and CAN 5 of 2022 are disposed of accordingly.

There shall be no order as to costs.

Urgent Photostat certified copy of this order, if applied for, be supplied to the parties subject to compliance with all requisite formalities.

**(Biswajit Basu, J.)**