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C.O. 2970 of 2022

**Smt Kalpana Dutta
Vs
Shahala Iqbal & Ors**

Mr. Mrinal Kanti Ghosh,
... For the petitioner.
Mr. Mr. Dibakar Bhattacharjee, .. for the O.Ps.

The subject matter of challenge in this case is against an order of affirmance, passed in Misc. Appeal No. 232 of 2019 of learned Additional District Judge, 5th Court, Alipore pertaining to grant of ad interim order of injunction by Trial Court in Title Suit No. 1015 of 2019 of learned Civil Judge (Junior Division) 6th Court, Alipore.

Mr. Mrinal Kanti Ghosh, learned advocate appearing for the petitioner submits that at the time of admission of this Misc Appeal, the Court below in appeal recorded the prima faice case, and the urgency of the circumstances, while granting interim protection, which has been ultimately vacated upon dismissing the appeal without truly advertng to the case presented and pressed.

Admittedly, the pending litigation before the trial Court relates to cancellation of a deed.

It is thus submitted by the learned advocate for the petitioner that pending decision of the trial Court an interim protection may be granted to the

petitioner/plaintiff upon viewing the prima facie case recorded by the Court below in appeal at the time of admission of appeal and granting interim protection.

Mr. Dibakar Bhattacharjee, learned advocate appearing for the opposite parties repudiates the contention raised by the petitioner, submitting that there has been adequate consideration given in terms of the facts presented and pressed before the trial Court.

Several documents could not be produced before the trial Court and the interlocutory findings made at the admission stage by the Court below in appeal can never be operative, while deciding the appeal in final form giving a hearing to both the parties to this case.

It is thus submitted by the learned advocate for the opposite parties that there lies nothing to be interfered with.

Admittedly, the injunction application filed under Order 39 Rules 1 and 2 CPC has not yet been disposed of.

Upon perusal of the impugned order, it appears that there is neither any manifest error apparent on the face of the order, or grave injustice or gross violation of justice has occasioned to the petitioner with the refusal of interim injunction.

In a situation like this, unless there is express perversity in the order impugned, the authority of this

Court under Article 227 of the Constitution of India is not permissible to be exercised.

When injunction application has not yet been finally decided, this Court does not want to interfere with the impugned order.

The revisional application stands disposed of directing the Court below to ensure expeditious disposal of the pending injunction application under Order 39 Rules 1 and 2 CPC, providing sufficient opportunity of hearing to either of the parties to this case, but without granting unnecessary adjournment.

Petitioner, however, is given liberty to produce documents in support of his case during the hearing of injunction application, if not already produced, and if such document is produced, the same may be considered in context with the objection to be advanced by the opposite parties, and resolve the same in accordance with law.

The injunction application as such may be disposed of expeditiously without granting unnecessary adjournment, preferably before the end of Summer Vacation of the Court below for the year 2023.

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)