

20.10.2022
Sl. No. 3

sn

C.O. 3260 of 2022

Fazal Ebadullah
Vs.
Ebad Exports Private Limited

Mr. Anupam Kr. Bhattacharyya
Mr. Dipankar Mullick
... for the petitioner

Mr. Arijit Bardhan
Mr. Rishobh Dutta Gupta
...for the opposite party

This revisional application stems out of an order passed by the learned Civil Judge, Senior Division, Sealdah, in connection with Title Suit No. 271 of 2022 while considering the application for temporary injunction filed under Order 39 Rule 1 & 2 by Ebad Exports Private Limited. Though no caveat has been filed, Mr. Bardhan, learned Counsel appears to represent the opposite party/plaintiff.

Mr. Bhattacharyya, learned Counsel for the petitions submits that for all practical purposes the possession of the suit property is with the petitioner Fazal Ebadullah but suppressing all material facts the opposite party/plaintiff obtained the order impugned and thereby trying to disturb the possession of the petitioner.

Refuting such submission, Mr. Bardhan, learned Counsel for the opposite party submits that the order impugned was passed while considering the application under Order 39 Rule

1 & 2 of the Code of Civil Procedure and it is rightly adverted by Mr. Bardhan that the order is an appealable order and not amenable to revision. While expressing his agreement with Mr. Bardhan regarding nature of the order impugned, it has been submitted by Mr. Bhattacharyya, learned Counsel for the petitioner that apprehension of being dispossessed by the opposite party/plaintiff with the help of the impugned order has made the petitioner file the application under consideration. Petitioner has lodged a complaint before the police as well.

However, refuting such claim of Mr. Bhattacharyya, Mr. Bardhan, learned Counsel for the opposite party asserts that his client has been possessing the suit property and learned Trial Court having been satisfied *prima facie* about such possession, passed the order impugned.

There is no dispute that the order impugned was passed *ex parte* and the learned Trial Court has the jurisdiction to pass *ex parte* interim order. There is nothing to suggest that while passing the order impugned the learned Trial Court exceeded the jurisdiction. Since the impugned order is appealable one, I do not find

any reason to entertain the petition by exercising the jurisdiction conferred under Article 227 of the Constitution of India.

Mr. Bhattacharyya is seeking liberty to file petition under Order 39 Rule 4 of the Civil Procedure Codes to show the possession of the petitioner and direction upon the learned Trial Court for early hearing.

Liberty, nay such right is inherent. Mr. Bhattacharyya, learned Counsel for the petitioner is insisting for direction upon the learned Trial Court to consider all the points while deciding the application for temporary injunction on merit. It is obvious that Trial Court would consider all points urged. No direction is necessary for that.

Upon completion of the pleadings, I have every reason to believe that the learned Trial Court would dispose of the injunction application as early as possible, unless prevented by prayer for unnecessary or fanciful adjournment.

This revisional application is thus disposed of.

All parties are to act on the basis of the server copy of this order.

Copy of the order be sent to learned Trial Court.

Urgent Photostat copy be made available if applied therefor, following requisite procedure.

(Siddhartha Roy Chowdhury)