

Item No.1
12.09.2023
Court. No. 19
GB

C.O. 205 of 2022

Mofiuddin Sk.
Vs.
Sri Subhas Chandra Sardar

Ms. Pampa Dey (Dhabal)

...for the Petitioner.

This revisional application arises out of an order dated December 17, 2021, passed by the learned District Judge at Alipore, District – 24 Parganas (South) in Misc. Appeal No.263 of 2021.

By the order impugned, the learned lower appellate court rejected a prayer for stay of the order passed by the learned trial judge in Title Suit No.1441 of 2021. The learned trial judge passed an order of ad interim injunction restraining the defendant/petitioner from disturbing the peaceful possession of the plaintiff in respect of the ground floor of the suit property and also from installing the electric meter therein. According to the learned trial judge, the plaintiff had made out a prima facie case to go to trial. The court found that the defendant/developer had neither delivered the plaintiff's allocation nor did he pay the balance amount of Rs.9 lakhs. On the contrary, the defendant was trying to install an electric meter on the ground floor of the suit property forcibly, which could result in dispossession.

Considering the balance of convenience and inconvenience and the prima facie case of the plaintiff/owner of the property, the ad interim order was passed. Such ad interim order was challenged in the misc. appeal. The learned lower

appellate court, upon considering proposition of law laid down by the High Court, rejected the prayer for ad interim injunction and directed the appellant/petitioner to issue notice.

It has been settled by judicial decisions that in cases of like nature, instead of staying the order of ad interim injunction, the lower appellate court should proceed to dispose of the misc. appeal itself. Granting a stay of the order of ad-interim injunction passed by the trial court, would amount to allowing the Misc. Appeal itself. The Misc. Appeal was filed from an order of ad-interim injunction, passed by the learned trial judge.

Reference is made to the decisions of Gautam Kumar Heda vs. State reported in 1994(1) ILR 72. This Court held as follows:-

“10. Further, the scope of granting temporary or ad interim injunction or stay in a suit or in a regular appeal, is quite wider than that in a miscellaneous appeal, arising out of the order granting or refusing any ad interim injunction in the suit. The scope of the miscellaneous appeal before the lower appellate Court in the present case is, whether the order granting ad interim injunction, passed by the trial Court, is legal or not. Such appeal should be heard expeditiously by the lower appellate Court, but ordinarily, the lower appellate Court should not pass any ad interim order resulting practically allowing the appeal itself at the initial stage without hearing the other side.”

The said decision was subsequently followed in the decision of Mobassor Hossain and ors. vs. Manik Chandra Pal and ors. reported in 2005(2) CLJ 482, This court held as follows:-

“2. In my view, the learned Judge in the Lower Appellate Court was not justified in

granting stay of operation of the order granting temporary order of injunction passed by the learned Trial Judge. In a miscellaneous appeal arising out of order granting temporary injunction, all efforts should be made by the learned Judge in the Lower Appellate Court to dispose of such appeal, but, normally, no stay of operation of the order granting temporary injunction should be granted resulting practically allowing the appeal itself at the initial stage without hearing the other side.

3. I, therefore, set aside the order impugned in this revisional application and direct the learned Judge in the Lower Appellate Court to make all endeavour to see that the appeal itself is disposed of by December, 2005 peremptorily. Accordingly, I authorise the learned Judge in the Lower Appellate Court not to grant any unnecessary adjournment to either of the parties while disposing of the appeal.”

Moreover, it appears to this Court that the order of ad interim injunction was refused on December 17, 2021. Almost two years has lapsed and the learned counsel is not in a position to apprise the Court with regard to the status of the misc. appeal.

Under such circumstances, the learned court below has rightly exercised jurisdiction and directed the appellant to issue notice upon the contesting parties.

Accordingly, the revisional application is disposed of without any orders, but with a direction upon the lower appellate court to dispose of the misc. appeal preferably within a period of four months from date of communication of this order.

This Court has not gone into the merits and demerits of the issue involved in the proceeding.

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

(Shampa Sarkar, J.)