

31.8.2023
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Ct. no. 652
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CO 339 of 2018

Somnath Das
Vs.
Amalendu Saha & Ors.

Mr. Indranil Nandi
Ms. Madhumita Patra ...for the Petitioner

Opposite parties are not represented.

This is an application under Article 227 of the Constitution of India, preferred against the order dated 30th January, 2017, passed in connection with Misc. Appeal no. 54 of 2012 arising out of Title Suit no. 156 of 2012 by the learned Additional District Judge (Senior Division), 1st court, Sealdah.

The petitioner as plaintiff filed aforesaid suit for declaration and permanent injunction restraining defendants from enforcing the order dated 23.7.2010 passed by the Consumer forum in Case no. CDF/Unit II/427/2009 as according to the plaintiff/petitioner, said order is not binding and enforceable against the right title and interest of the petitioner and other co-sharers who were not made party to the said proceeding. Along with the injunction application, the petitioner also filed one petition for Ad-interim injunction and learned Trial court refused to grant ad interim injunction.

Being aggrieved by the said order, the petitioner preferred aforesaid Misc. appeal being no. 54 of 2012 and Appellate court after contested hearing, affirmed the order of the trial court.

Learned counsel for the petitioner submits that the learned court below has failed to take note of the fact that the petitioner being one of the co-owner has interest in the matter and he ought to have granted injunction in favour of the petitioner. However, during the course of hearing, learned counsel for the petitioner submits that the main injunction application filed by the petitioner is still pending for hearing before the Trial court, which is required to be disposed of , otherwise Trial of the suit is getting delayed.

In such view of the matter, invoking jurisdiction under Article 227 of the Constitution of India, Trial Court is directed to dispose of the petitioner's application for temporary injunction preferably within a period of twelve weeks from the date of communication of the order. I have made it clear that I have not gone into the merit of the injunction application and learned court below will dispose of the injunction application without being influenced by any observation made herein.

C.O. 339 of 2018 is accordingly disposed of.

Urgent photostat certified copy of this order, if applied for, be given to the parties upon compliance of all requisite formalities.

(Ajoy Kumar Mukherjee, J.)