

Item No. 9
16.08.2023
Court. No. 19
GB

C.O. 514 of 2023

Utsav Mondal
Vs.
Pintu Naskar & Anr.

Mr. Ayan Banerjee,
Mr. Sabir Ahmed,
Mr. Biswajit Sarkar,
Mr. Dhiman Banerjee,
Ms. Suman Biswas

...for the Petitioner.

The petitioner is aggrieved by the order dated July 20, 2022, passed by the learned Civil Judge (Senior Division), 1st Court at Baruipur, District-24 Parganas (South) in Misc. Appeal No.17 of 2022.

By the order impugned, the learned lower appellate court refused to stay the ad interim order passed by the learned trial judge.

It is urged that the learned lower appellate court ought to have protected the interim rights of the defendant on account of them being in possession of the property.

This Court is of the view that the learned court did not err in passing the order impugned directing service as an order of stay of the order passed by the learned trial court would amount to allowing the misc. appeal in its final form. Reference is made to the decision of **Gautam Kumar Heda vs. State** reported in **1994(1) ILR 72**.

As this Court is not inclined to pass any order of stay of the order passed by the learned trial judge, Mr. Banerjee, learned advocate appearing on behalf of the petitioner fairly submits that the defendant wishes to withdraw the Misc.

Appeal No.17 of 2022 on the next date when the appeal is fixed. Upon such withdrawal, Mr. Banerjee's client shall be at liberty to approach the learned trial judge for expeditious disposal of the application for temporary injunction. If such prayer is made, the application for temporary injunction shall be disposed of within two months from withdrawal of the misc. appeal without any adjournment being granted.

Accordingly, the revisional application is disposed of.

However, there shall be no order as to costs.

Urgent photostat certified copy of this order, if applied for, be given to the parties on priority basis.

(Shampa Sarkar, J.)