

07.08.2023
Sl. No.160(ML)
srm

C.O. No. 1149 of 2023

Sahidul Molla & Anr.

Versus

Rajina Bibi & Ors.

Ms. Sanghamitra Nandi

...for the Petitioners.

The revisional application has been filed challenging an order dated March 30, 2023 passed by the learned Additional District Judge, Fast Track (3rd Court), Barasat, North 24-Parganas, passed in Misc. Appeal No.39 of 2023.

By the order impugned, the learned lower appellate court rejected the prayer for stay of the order dated March 3, 2023 passed in Title Suit No.203 of 2023. The title suit is pending before the learned Civil Judge (Junior Division), 1st Court at Barasat. The learned trial Judge directed both the parties to maintain *status quo* with regard to 'A' schedule property.

The petitioner preferred a miscellaneous appeal. The petitioner prayed for stay of the order of *status quo*. The learned lower appellate court rightly rejected the prayer for stay. Although no specific reasons have been assigned for not allowing the stay, but granting the stay at the interim stage,

without hearing the respondents in the appeal, would amount to granting the main relief in the misc. appeal.

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.”

The said decisions were further followed in the decision of *Suman Biswas vs. Saroj Biswas and anr.* decided in *CO 118 of 2014*. The law is well settled that except under very exceptional circumstances, the proper course for the revisional Court would be to direct the main misc. appeal to be heard out expeditiously.

The order impugned does not call for interference. However, the learned court below is directed to ensure that the notice of the appeal is served within two weeks from the date of communication of this order. Thereafter, the misc. appeal along with the pending application(s) shall be disposed of within two months.

Upon disposal of the misc. appeal, the learned trial Judge shall dispose of the application for temporary injunction, expeditiously.

The revisional application is, thus, disposed of.

There will be, however, no order as to costs.

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

(Shampa Sarkar, J.)