

22.9.2023
210
Ct. no. 652
sb

**CO 2004 of 2019
With
CAN 1 of 2019 (Old CAN 7262 of 2019)
CAN 2 of 2023**

**Parimal Sarkar & Anr.
Vs.
Sri Kalyan Kumar Ghosh & ors.**

Mr. Rahul Karmakar
Mr. Sib Shankar Das ...for the Petitioners

Mr. Ashim Kr. Roy ...for the O.P no. 1

Re: CAN 2 of 2023

This is an application for expunging the name of the petitioner no. 2 from the cause title since the petitioner no. 2 namely, Nilima Sarkar died on 27.1.2023 leaving behind her legal heirs who are already on record.

In such view of the matter, the name of the petitioner no. 2 is expunged from the cause title.

The department is directed to make necessary correction.

CAN 2 of 2023 is accordingly disposed of.

**Re: CO 2004 of 2019
With
CAN 1 of 2019 (Old CAN 7262 of 2019)**

Being aggrieved by the order no. 12 dated 18th May, 2019 passed by the learned District Judge, Purba

Bardhaman in Title Appeal no 48 of 2018 arising out of Title Suit no. 11 of 1993, the present application under Article 227 of the Constitution of India has been preferred.

In the said suit, the petitioners herein prayed for injunction against the opposite parties and also filed application for temporary injunction. The said application was duly contested by the opposite parties and the trial court after hearing both the parties, was pleased to direct to maintain status quo as regards the nature and character of the suit property and it continued till disposal of the suit. Ultimately, the trial court by its judgment and decree dated 7th April, 2018, dismissed the said suit on contest.

Being aggrieved and dissatisfied with the said judgment and decree dated 7th April, 2018, the petitioners have preferred appeal before the learned District Judge, Purba Bardhaman in Title Appeal no 48 of 2018. In the said appeal, the plaintiff/appellant prayed for granting an injunction restraining the opposite parties from making construction over the suit property till disposal of the appeal.

Learned first appellate court, after hearing both the parties, passed the impugned order whereby the court below rejected the injunction application. Being aggrieved by the said order, this revisional application has been preferred on various grounds.

During the course of hearing, it appears to me that the entire subject matter of suit as well as appeal relates to the prayer regarding permanent and mandatory injunction as sought for by the plaintiff/appellant. More than four years have already been passed since, the impugned order was passed by the court below and no interim injunction was also sought for before this court during that period.

While exercising supervisory jurisdiction of this Court I think it would be prudent and appropriate to make a direction upon the court below for early disposed of the Appel which is based on sole issue of prayer for injunction, than to waste time with the interlocutory matter.

In such view of the matter, the court below is directed to dispose of the appeal being Title Appeal no. 48 of 2018 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 merits of the case and the court below or the Court-in-charge of the court below, will dispose of the appeal without being influenced by any observations made herein and without granting any unnecessary adjournment to either parties and if possible by making day to day hearing.

Accordingly, C.O. 2004 of 2019 is disposed of. Connected application, being CAN 1 of 2019 (Old CAN 7262 of 2019) is also 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.)