

08.06.2023
Sl. No.8(DL)
srm

C.O. No. 1673 of 2023

Sankar Ranjan Mondal & Ors.

Versus

M/s. A.B. Engineering Works (P) Limited

Mr. Partha Chakraborty,
Ms. Poulomi Dutta

...for the Petitioners.

This revisional application has been directed against an order dated April 11, 2023 passed by the learned District Judge, South 24-Parganas at Alipore in Misc. Appeal No.46 of 2023, refusing to grant any ad interim order of injunction against the defendant on the ground that in absence of sufficient documents and in the absence of a, *prima facie*, case the interim order of injunction could not be passed.

The petitioners as plaintiffs filed a suit for declaration, injunction, recovery of khas possession and damages against the opposite party before the learned Civil Judge (Senior Division), 7th Court at Alipore. The plaintiffs/petitioners prayed for an ad interim order of injunction. The ad interim injunction was refused by the learned trial court on the following grounds:-

- (a) The original documents of either the gift deed or the lease deed had not been filed by the plaintiffs.
- (b) Although there was a restriction of transfer and alienation of the property for a period of 10 years, the plaintiffs themselves had entered into a lease agreement with the opposite party and had granted 99 years lease in favour of the defendant.
- (c) The factum of misrepresentation by the defendant which led to the execution of the lease deed for 99 years could not be established unless either sufficient documents were produced or the defendant was heard.
- (d) When the defendant prepared to start a construction, the plaintiffs suddenly became aware of the embargo of 10 years, although they were all parties to the said deed along with the deceased mother.
- (e) The facts revealed that the defendant was in possession of the suit property since long.
- (f) In view of the lack of urgency in the matter the prayer for ad interim injunction could not be granted.

This Court finds that the predecessor of the plaintiffs had been gifted the property sometime in 1991. The gift deed

covenanted that the predecessor-in-interest of the plaintiffs would not alienate the property for a period of 10 years. The plaintiffs claim right, title and interest to their predecessor-in-interest. The plaintiffs entered into a lease agreement with the opposite party and registered the deed, five years after their predecessor-in-interest has come in possession of the said property. Subsequently, when the plaintiffs wanted to transfer the suit property to a third party the defendant raised objection. Hence the suit was filed. Even assuming that the plaintiffs were misled into executing the lease deed they kept quiet from 1996 to 2021. The order of refusal to pass an ad interim injunction was challenged by way of an appeal being Misc Appeal No.46 of 2023. The learned lower appellate court also refused to pass an ad-interim stay in the absence of sufficient documents.

In the matter of *Gautam Kumar Heda vs. State reported in 1994(1) ILR 72*, this Court has 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 decision was further followed in the decision *43 Suman Biswas vs. Saroj Biswas and anr. decided in CO 118 of 2014*. 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, instead of passing an ad-interim injunction.

Thus, the Court does not find any reason to interfere with the orders impugned. An order of ad-interim injunction in a case of such nature would amount to allowing the main relief. The trial court held that the defendant could not be restrained at the ad-interim stage from using the suit property in any manner without giving an opportunity of hearing to the said defendant who was admittedly in possession of the suit property since 1991. Whether the petitioners are entitled to an ad interim order of *status quo* or not, shall be decided in the appeal which is pending before the learned District Judge, South 24-Parganas at Alipore, being Misc. Appeal No.46 of 2023.

This Court directs the learned lower appellate court to take expeditious steps for disposal of the application for stay as also the misc. appeal within a period of three months from the next date fixed.

A copy of the revisional application along with a server copy of this order be served upon the opposite party within a week from date.

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.)