

July 17, 2023
Sl. No.19
Court No.19
s.biswas

CO 1727 of 2023

Milan Automobile and others
vs.
Kursiya Khatun and others

Mr. Ayan Kumar Boral
Mr. Anisur Rahaman

... for the petitioners

Affidavit of service filed by the petitioners, indicates service upon the opposite parties as also the learned advocate who is contesting the suit in the learned court below.

Despite service, none appears for the opposite parties.

This is a case where the application for extension of ad interim order of injunction, filed under Section 151 of the Code of Civil Procedure by the plaintiffs in Title Suit No.380 of 2021, had been rejected on the ground that the application for extension was not sufficiently stamped.

Learned Civil Judge (Junior Division), 2nd Court, Berhampore, Murshidabad, instead of allowing the plaintiffs to rectify the defect and pay the deficit court fees on the insufficiently stamped application, rejected the application for extension of the order of temporary ad interim injunction and fixed the suit for hearing of the application under Order 7 Rule 11 of the Code of Civil Procedure.

Having considered the records, this court finds that for the ends of justice, an opportunity to rectify

the defect in the application under Section 151 of the Code of Civil Procedure, should have been granted.

Thus, the revisional application is disposed of with the direction upon the learned court below to allow the petitioners to file a separate application with sufficient stamp, for extension of the ad interim order already passed and upon allowing the opposite parties to contest the said application necessary orders shall be passed, keeping in mind that the ad interim order of injunction had been passed by the learned court below, upon being satisfied about the existence of the, prima facie, case in order to protect the property in question.

The learned court below shall decide the matter independently. Thereafter, the application under Order 7 Rule 11 of the Code of Civil Procedure shall be considered, upon disposal of the said application under Section 151 of the Code of Civil Procedure. The order impugned is modified.

The revisional application is thus disposed of.

All the parties are directed to act on the basis of the server copy of the order.

(Shampa Sarkar, J.)