

05.07.2023
Sl. No.27(DL)
srm

C.O. No. 2000 of 2023
Amalendu Biswas & Anr.
Versus
Sudhir Ranjan Biswas

Mr. Malay Bhattacharyya,
Mr. Subhrojyoti Ghosh
...for the Petitioners.

Mrs. Pampa Dey Dhabal,
Mr. Nikhil Kumar Gupta
...for the Opposite Party.

The revisional application is directed against an order dated June 12, 2023 passed by the learned Additional District Judge, Bishnupur, Bankura in Misc. Appeal No.01 of 2023.

By the order impugned, the learned lower appellate court passed an order of stay of the *ex parte* ad interim order of injunction. The ad-interim order had been passed in favour of the plaintiffs by the learned Civil Judge (Senior Division), Bishnupur, Bankura in Title Suit No.31 of 2023 dated May 12, 2023. By the order dated May 12, 2023, the learned trial court found that the property should be protected to the extent that the nature and character of the same should not be changed. *Prima facie* case had been made out on the basis of the

documents produced by the plaintiffs, *inter alia*, claiming 0.04 acres of land through inheritance.

Such order was challenged in Misc. Appeal No.1 of 2023 by the opposite party. The learned lower appellate court admitted the appeal and passed an order of stay of the ad interim order of *status quo*, without assigning any reasons and without appreciating the fact that such stay amounted to allowing the appeal finally, at the interim stage.

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

43 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 expeditiously by modifying the order impugned.

This Court is of the view that proper course of action would be to direct the learned lower appellate court to decide the misc. appeal along with the application for stay expeditiously preferably within a period of two months from the next date fixed.

The respondents shall file written objection in the meantime and serve a copy upon the appellant/opposite party.

The parties will continue to maintain *status quo*, till the disposal of the misc. appeal. This court has not entered into the facts involved.

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.)