

August 1, 2023
Sl. No.159
Court No.19
s.biswas

CO 2195 of 2023

Sri Tanmoy Bar and others
vs.
Mrs. Asha Bhujel

Mr. Partha Chakraborty
Ms. Paulomi Dutta

... for the petitioners

This revisional application has been filed challenging an order dated June 17, 2023 passed by the learned Additional District Judge, Baruipur, in Misc. Appeal No.20 of 2023. The misc. appeal arose out of an order dated May 17, 2023, passed by the learned Civil Judge (Junior Division), 2nd Court at Baruipur in Title Suit No.353 of 2023.

This court does not find any illegality in the order dated June 17, 2023 passed by the learned Additional District Judge, Baruipur, in Misc. Appeal No.20 of 2023.

The learned court below held that the application for temporary injunction in connection with misc. appeal should be heard out. The defendants preferred the misc. appeal, being aggrieved by an order dated May 17, 2023, restraining the defendants from changing the nature and character of the suit property. According to the defendants, in an earlier suit, an order of status quo with regard to the nature and character of the suit property had already been passed. Such order of status quo should be passed in the suit as well.

In my opinion, allowing the ad interim order of injunction would amount to allowing the misc. appeal in the final form.

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.

Under such circumstances, the only order that can be passed by this court is to direct the learned Additional District Judge, Baruipur to dispose of the Misc. Appeal No.20 of 2023 along with the application for injunction within three months from the next date fixed, upon granting adequate opportunity to the opposite party to contest the same. The time period fixed is mandatory.

The revisional application is thus disposed of.

A copy of this revisional application along with the server copy of this order, be served upon the opposite party.

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

Urgent photostat certified copies of this order, if applied for, be made available to the parties upon compliance with the requisite formalities.

(Shampa Sarkar, J.)