

05.01.2023
Item No.5 & 9
Ct. No.7
CHC
(disposed of)

C.O. 2405 of 2022

Sri Gunjara Timothy

Vs.

The Christian Service Society & ors.

With

C.O. 2443 of 2022

Sri Ankur Lodha & ors.

Vs.

The Christian Service Society & ors.

Mr. Mainak Bose,
Mr. Gautam Das,
Mr. Madhumita Patra

...for the petitioners

Mr. Bhudeb Chatterjee,
Mr. Tusar Kanti Har,
Mr. Rajendra Banerjee,
Mr. Sudip Chokrobarty,
Mr. Dipjyoti Chokrobarty,
Mr. Somenath Chokrobarty

...for the opposite parties

On the prayer of both parties, two revisional applications being C.O.2405 of 2022 and C.O.2443 of 2022, are taken up together for a common law point being involved.

The ad interim restrain order passed in Misc. Appeal No.110 of 2022, pending before the learned District Judge, Paschim Medinipur, is under challenge in this case.

Mr. Bose, learned advocate appearing for the petitioners upon referring law points submits that the suit itself is not maintainable, and when the suit is not maintainable, there cannot be any ad interim injunction granted by any court of law.

The attention of the court is drawn to paragraphs '5', '7' and '8' of the plaint including the cause-title of the plaint, at whose instance the suit was instituted.

The first and foremost challenge thus raised by Mr. Bose is that without proper application of the mind, ad interim injunction has been granted, because the suit itself is not maintainable.

It is further submitted by Mr. Bose that ad interim injunction, if granted, should have been for a limited period of time, but the manner in which the ad interim injunction was granted is supposed to continue for an indefinite period of time.

Upon making such submission, Mr. Bose submits that ad interim injunction cannot be allowed to be continued in an endless manner.

Mr. Bhudeb Chatterjee, learned advocate appearing for the opposite parties disputes with the submission advanced by Mr. Bose upon supporting the order of the court below.

It is disclosed by learned advocate for the opposite parties that the appeal is fixed before the court below

on 20th January, 2023, and under the garb of filing this application, the petitioners have preferred to remain away from the appeal without ensuring their appearance in the pending appeal.

It is thus submitted by Mr. Chatterjee that when the appeal is pending before the court below on 20th January, 2023, the points now raised should not be gone into by this Court, and the same may be left to be decided by the court below in the pending appeal.

The restrain order was passed in Misc. Appeal No.110 of 2022, which is of course ad interim in nature, on 12th July, 2022. In the meantime, petitioners have suffered ad interim injunction for the last five months. In a situation like this, this Court is not inclined to interfere with the order passed by the court below, when the appeal itself is pending before the court below on 20th January, 2023.

The points raised by Mr. Bose are basically relatable to the law points, which may be addressed by the court below, if raised within the peripheries of the Misc. Appeal, and the same shall be dealt with by the court below, providing an opportunity of hearing to either of the parties to this case.

It is however, clarified that if for any reasons whatsoever, the pending appeal could not be taken up on 20th January, 2023, the same may be peremptorily

taken up within fortnight thereafter, without granting any unnecessary adjournment, unless it is extremely unavoidable, and the logical conclusion of the Misc. Appeal may be reached with utmost expedition.

Liberty is given to the petitioners to file objection against the injunction application, upon supplying a copy well in advance to the opposite parties, if not already filed in the meantime.

This order is passed without prejudice to the rights and contentions of the parties and without entering into the merits of the case.

Parties are directed to make communication of this order to the court below.

Urgent certified photostat copy of this order, if applied for, be given to the parties as expeditiously as possible on compliance of all necessary formalities.

(Subhasis Dasgupta, J.)