

S/L 21
20.01.2023
Court. No. 12
Sourav

**CO 3478 of 2011
With
CAN 1 of 2017 (Old No: CAN 6769 of 2017)**

**Madan Mohan Das & Anr.
Vs.
Smt. Sipra Dutta nee Roy & Ors.**

Mr. Sourav Sen

...for the petitioners.

The affidavit-of-service as filed in Court today be kept with the record.

Mr. Sourav Sen, learned advocate for the petitioners is present. None appears on behalf of the opposite parties.

At the very outset Mr. Sen, learned advocate for the petitioners submits before this Court that in spite of best effort the presence of the opposite parties could not be ensured. It is thus submitted that the present revisional application be disposed of in absence of the opposite parties. On perusal of the entire materials, I find sufficient force in the submission of the learned advocate for the petitioner.

Accordingly, the instant revisional is taken up for hearing.

Heard Mr. Sen, learned advocate for the petitioner. Perused the certified copy of the impugned order and the other materials as placed before this Court. It appears that the plaintiffs/petitioners filed Title Suit No. 654 of 2011 as against the present opposite parties in the First Court, learned Civil Judge (Senior Division), Barasat, North 24 Parganas praying for declaration and injunction wherein the plaintiffs have also prayed for an *ad interim* order of injunction on the basis of an application as filed under Order

39 Rules 1 and 2 read with Section 151 of the Code of Civil Procedure. It reveals that by order no. 2 dated 19.09.2011, learned Trial Court refused to pass any interim order and challenging the same the plaintiffs/petitioners file Misc. Appeal No. 85 of 2011 wherein a similar prayer was made for passing an *ad interim* order of injunction which by the impugned order was refused.

It appears that at the Motion stage i.e., on 30.09.2011 this Court passed an *ad interim* order which was directed to be operative till 30.11.2011 or until further order whichever is earlier.

Such being the position and since the presence of the opposite parties could not be secured in spite of best efforts, this Court considers that justice would be sub-served if the present revisional application is disposed of in the manner indicated hereinafter.

Accordingly, it is directed that the First Court, learned Civil Judge (Senior Division), Barasat, North 24 Parganas shall dispose of the injunction application as filed under order 39 Rules 1 and 2 read with Section 151 of the Code of Civil Procedure by the plaintiffs in Title Suit No. 654 of 2011 within three months from the date of communication of this order after being satisfied about the service of notice upon the defendants of the said suit i.e., Title Suit No. 654 of 2011. It is further ordered that the *ad interim* order as passed by this Court on 30.09.2011 shall continue till disposal of the said injunction application by the learned trial Court.

With the aforementioned observation, the instant revisional application being CO 3478 of 2011 as well as Misc.

Appeal No. 85 of 2011 as pending before the learned District Judge, North 24 Parganas, Barasat stand hereby disposed of.

Department is directed to forward two copies of this order to the learned District Judge, North 24 Parganas, Barasat as well as learned First Court, learned Civil Judge (Senior Division), Barasat.

All interim applications as filed in connection with the instant revisional application stand hereby disposed of.

Urgent photostat certified copy of this order, if applied for, be given to the parties, upon compliance of necessary formalities.

(Partha Sarathi Sen, J.)