

06.10.2023
Item No. 3
Ct. No. 7
PG

C.O. 2890 of 2023
Mr. Aniruddha Lahiri & Anr.
Vs.
Mr. Anand Saraf & Ors.

Mr. Jayanta Sengupta
Ms. Shreya Basu Mallick
Ms. Surabhi Sarawgi.....for the petitioners

This application under Article 227 of the Constitution of India is at the instance of the defendants in a suit for declaration of right of user of a roof and for permanent injunction challenging an order passed in Misc. Appeal No. 139 of 2023 rejecting their prayer for stay of operation of the order of injunction passed by the learned trial Judge.

The learned Court below after taking note of the proposition laid down in Mobasser Hossain vs. Manik Chandra Pal & Ors. reported at 2005 SCC Online Cal. 482 held that in a miscellaneous appeal arising out of an order granting temporary injunction all efforts should be made to dispose of such appeal and normally stay of operation of the order granting temporary injunction should not be passed as it would amount to allowing the appeal at the initial stage and rejected the prayer for stay of operation of the order of injunction.

This Court does not find any infirmity in the impugned order passed by the learned District Judge. This Court, finds that hearing of the appeal was fixed on 7th August, 2023.

Learned advocate appearing for the petitioners submits that on that date the petitioners took an adjournment on the ground that the petitioners were contemplating filing of this revisional application.

In view thereof, this Court is of the considered view that ends of justice would be met if a direction for expeditious hearing of the appeal is passed.

The learned Court below is requested to take up hearing of the appeal on the next date fixed and to make an endeavour to dispose of the same as expeditiously as possible and preferably within a period of four weeks from the next date fixed without granting any unnecessary adjournments to either of the parties.

With the above observations, C.O. 2890 of 2023 stands disposed of.

There shall be, however, no order as to costs.

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

(Hiranmay Bhattacharyya, J.)