

September 25, 2023
Sl. No.30
Court No.19
s.biswas

CO 2929 of 2023

Sri Sunil Kumar Saha and others

vs.

Sri Arindam Roy and others

Mr. Rahul Karmakar

Ms. Ishia Kundu

Mr. Soumyajit Majumder

... for the petitioners

This court is not inclined to interfere with the order impugned at this stage as the learned lower appellate court has passed the order of status quo with reasons.

However, considering the issues raised by Mr. Karmakar, learned advocate for the petitioners, this court is of the view that all the issues raised in the revisional application, may be raised before the learned lower appellate court. The misc. appeal along with the pending application, should be disposed of within a month from the next date fixed.

The correctness of the order of the learned trial judge refusing the ad interim order of injunction, is the subject matter of the Misc. Appeal no.01 of 2023. By order dated December 23, 2022, the learned Civil Judge (Junior Division), 2nd Court, Barrackpore, refused the ad interim order of injunction in Title Suit No.612 of 2022. Such order was challenged in the misc. appeal.

The learned lower appellate court, passed an order of status quo, restraining both the parties for

changing the nature and character of the property in question.

Another order was passed allowing the implementation of the order of status quo with the help of the police. This court is not inclined to entertain the revisional application only on the ground that the issues raised with regard to the facts, should be decided in the misc. appeal itself. The learned lower appellate court will to come to a prima facie finding, whether the appellant had a triable case and whether balance of convenience and inconvenience, was in favour of granting an order of status quo.

As the date has been fixed on October 16, 2023, the petitioners are at liberty to approach the learned court below by filing an application along with the server copy of this order, for preponment of the date so that the misc. appeal is disposed of on merits within the time period mentioned above.

The revisional application is thus disposed of, without any interference.

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.)