

October 17, 2023
Sl. No.51
Court No.19
s.biswas

CO 2940 of 2022

Ishanika Developers Private Limited

vs.

*Sree Sree Iswar Lakshmi Janardhan Thakur, Sree Sree
Gopal Jew, Sree Sree Shib Thakur, Sree Sree Chandi,
Shree Shree Kali and Sree Sree Sasthi Mata Thakurani*

Mr. Animesh Paul

... for the petitioner

Mr. Somnath Ghoshal

Mr. Satyajit Senapati

Mr. Subha Senapati

... for the opposite party

Nothing remains to be decided in this revisional application.

The Additional District Judge, Fast Track, 1st Court, Howrah refused to stay the order of ad interim injunction passed in Title Suit No.608 of 2022. The petitioners challenged such order before this court. A coordinate bench, at the time of admission of the revisional application, gave an interim protection to the petitioner to the extent that the learned trial court's order shall remain stayed.

However, as the misc. appeal was filed from an order of ad interim injunction, this court is of the view that the stay was rightly denied. They stay would amount to allowing the misc. appeal at the interim stage. Reference is made to the decision 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. Thus, the application for injunction should be disposed of expeditiously by the learned trial judge. Nothing remains to be decided in the misc. appeal as well. The Misc. Appeal No.86 of 2022 is also disposed of with consent of the parties.

The learned trial judge is directed to dispose of the application for temporary injunction within a period of two months from reopening of the court after puja vacation. The parties are at liberty to file a put up application, upon service of notice to each other, praying for fixing early dates for disposal of the said application.

The revisional application is thus disposed of.

This court has not gone into the merits of the claims and counter-claims of the parties.

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.)