

October 17, 2023
Sl. No.13
Court No.19
s.biswas

CO 3845 of 2023

Tuhindra Narayan Roy

vs.

Atindra Narayan Roy and another

Ms. Pompey Bose

Mr. Anjan Banerjee

... for the petitioner

Mr. Biswajit Chowdhury

... for the opposite parties

By the order dated October 9, 2023, the learned District Judge, Howrah fixed the Misc. Appeal No.169 of 2023, for hearing on the point of maintainability.

The petitioner prayed for ad-interim order of appointment of receiver in respect of the B schedule property before the learned trial court. The prayers were that the receiver should take over the keys from the defendants upon making an inventory in respect of the property, with prior intimation of not less than 72 hours to the parties. The keys be handed over to the petitioner, so that the petitioner may stay thereat for his wife's treatment. After completion of the medical treatment, the petitioner will return the keys to the receiver, who would maintain the register and submit a report before the learned court below on a monthly basis.

The learned trial judge did not pass any ad-interim order as prayed for and fixed the matter for

hearing. The defendants were allowed time to file written objection.

Aggrieved, the misc. appeal was filed.

The learned lower appellate court was of the, prima facie, view that the law did not make any provision for passing ad-interim orders for appointment of a receiver, pending the adjudication of the main application. Thus, the maintainability of the misc. appeal was in question. The appellate court fixed the misc. appeal, for hearing on the point of maintainability.

Aggrieved, this revisional application has been filed.

This court is of the view that the learned lower appellate court rightly kept the misc. appeal pending for hearing, upon considering the different provisions of law.

According to the learned lower appellate court, the matter could not be decided, without hearing all the parties. In my opinion, keeping the revisional application and the misc. appeal pending, will serve no purpose. The petitioner pleads urgency. The matter is required to be considered expeditiously by the learned trial judge before whom the application for appointment of receiver had been filed. Parties also consent that the Misc. Appeal should be disposed of.

Under such circumstances, the revisional application is disposed of. The Misc. Appeal No.169 of 2023, which is pending before the learned District Judge, Howrah is also disposed of.

The following directions are passed:-

- a) The petitioner will be at liberty to file a put up petition with a copy to the opposite parties or the learned advocates for the opposite parties within a week after reopening of the court, praying for preponement of the date of hearing of the application for appointment of receiver.
- b) The learned court below, upon hearing the parties, shall fix the returnable date allowing at least a week's time to the opposite parties to file the written objection, if not already filed.
- c) The learned trial judge i.e. the Civil Judge (Senior Division), 1st Court, Howrah shall dispose of the said application not later than two months from the date fixed, without granting unnecessary adjournments to either 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.)