

27
sandip
Ct. 18
30.11.2023

C.O. No. 4082 of 2023

**National Bedding Store, being represented by its
Proprietors – Sk. Kutubuddin & Anr.**

Vs.

Sri Soumen Bhattacharya & Ors.

Mr. Tanmoy Mukherjee,
Mr. Souvik Das,
Mr. K. Raihan Ahmed,
Mr. Rudranil Das ... For the petitioners.

Mr. Bhaskar Chandra Manna ... For the O.P. No. 1.

The revisional application under Article 227 of the Constitution of India is at the instance of the plaintiffs in a suit for declaration for tenancy right and permanent injunction and is directed against the Order No. 02 dated October 18, 2023 (sic. October 18, 2022) and Order No. 03 dated November 16, 2023 passed by the 2nd Court In-Charge of the learned Civil Judge, (Senior Division) at Contai, District – Purba Medinipur in Misc. Appeal No. 29 of 2023.

The connected Title Suit No. 357 of 2023 is pending before the 1st Court of Learned Civil Judge, (Junior Division), Contai, District – Purba Medinipur. In the said suit, the petitioner filed an application under Order XXXIX Rules 1 and 2 of the Code of Civil Procedure. The learned Trial Judge, on October 05, 2023 passed an ad interim order of injunction on the said application.

The defendant no. 1 aggrieved by the said order has preferred the miscellaneous appeal out of which the present revisional application arises.

The appeal Court below by the first order impugned dated October 18, 2023, has admitted the said appeal and thereafter has stayed the operation of the order impugned till November 16, 2023 and by the second order impugned dated November 16, 2023 has extended the said order of stay till January 06, 2024.

The appeal court should not have stayed the operation of the order impugned at the very beginning as it would be amounting to allow the appeal itself at the threshold (See ***In Re: Guatam Kumar Hada*** reported in **(1994)ILR (1) Cal 72** and ***Mobassr Hossain & Ors. vs. Sri Manik Chandra Pal & Ors.*** reported in **2005(2) CLJ(Cal) 482**)

The orders impugned therefore are not sustainable and are accordingly set aside.

The 1st Court of learned Civil Judge (Senior Division), Contai, District – Purba Medinipur is directed to decide the Misc. Appeal No. 29 of 2023 on merits as expeditiously as possible in accordance with law preferably within a period of two months from the date of communication of this order and in doing so, shall not grant any unnecessary adjournments to either of the parties.

C.O. 4082 of 2023 is disposed of with the above terms without any order as to costs.

Urgent Photostat certified copy of this order, if applied for, be supplied to the parties subject to compliance with all requisite formalities.

(Biswajit Basu, J.)

