

13.12.2023
Sl. No. 24
Court No.2
Sandip

**In the Calcutta High Court
Circuit Bench at Jalpaiguri
Appellate Side**

C.O. 12 of 2023

Manoj Kumar Prasad & Ors.

vs.

Rabeya Khatun & Ors.

Mr. Bikramaditya Ghosh,
Ms. Supriya Singh ... for the petitioners

Mr. Bhaskar Roy Mahashyay,
Ms. Madhushri Dutta ... for the opposite parties.

The instant application under Article 227 of the Constitution of India is at the instance of the plaintiffs in a suit for injunction and is directed against the order dated January 20, 2023 passed by the learned Additional District Judge, Alipurduar in Miscellaneous Appeal No. 01 of 2023.

The connected suit being Title Suit No. 06 of 2023 is pending before the learned Civil Judge, (Junior Division) at Alipurduar, District – Alipurduar.

The learned Trial Judge by the order dated January 09, 2023 had refused to pass an ad interim order of injunction on the application filed by the plaintiffs under Order XXXIX Rules 1 and 2 of the Code of Civil Procedure.

The plaintiffs aggrieved by such refusal have preferred the miscellaneous appeal out of which the present revisional application arises.

The appeal Court below by the order impugned has dismissed the said appeal thereby has affirmed the order of the learned Trial Judge.

This Court is of the opinion that justice would be sub-served if the pending application for injunction is directed to be disposed

of on merit maintaining the order of injunction passed in the present revisional application.

Accordingly, the learned Trial Judge is requested to dispose of the pending application for injunction within a period of four months from the date of communication of this order and in doing so, shall not grant any unnecessary adjournment to either of the parties.

The defendants are permitted to affirm written objection to the said application for injunction within a period of two weeks from date, rejoinder thereto by the plaintiffs, if any, be affirmed within a week from the date of receipt of copy of such written objection. The parties shall file their respective affidavits before the Trial Judge on the next date of hearing of the said application.

Till the disposal of the said application, the order dated February 10, 2023 passed in this matter restraining the defendants from disturbing the peaceful possession of the petitioners over the suit property shall continue but the learned Trial Judge, without being influenced by the said fact, shall decide the application for injunction on its merit.

C.O. 12 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.)