

54  
01.9.2023  
Ct. 3  
SB

Calcutta High Court  
In the Circuit Bench at Jalpaiguri  
Appellate Jurisdiction

C.O. 132 of 2022

In the Matter of : Makbul Md. @ Haque

Mr. Ajay Singhania  
Ms. Jeenia Rudra                      ... for the petitioner

This application under Article 227 of the Constitution of India challenges the Order dated 16.9.2022 passed by the learned District Judge, Jalpaiguri in Misc. Appeal No. 46 of 2022.

Mr. Singhania, learned counsel representing the petitioner makes me go through the order impugned. It is submitted that the plaintiff / petitioner filed a suit being T.S. No. 384 of 2022 before the learned Civil Judge, Junior Division, Jalpaiguri for declaration and injunction against the defendants who happen to be the neighbour of the plaintiff and obtained an *ex parte* ad interim injunction. The defendant, however, assailed the said order in an appeal under Order 43 of Code of Civil Procedure and moved a petition for stay of operation of the order.

Learned District Judge, Jalpaiguri while admitting the appeal was pleased to grant limited stay of operation of the *ex parte* ad interim injunction till the returnable date i.e. on 14.11.2022. Before approaching the learned Appellate Court, the plaintiff / petitioner has challenged the order impugned on 11.10.2022.

Mr. Singhania, submits that the learned appellate court committed jurisdictional error by granting order of stay and thereby extending the final relief that could have been given to the appellant which is not permissible under the law.

In support of his contention Mr. Singhania, relies upon decision in Mobassor Hossain and Ors. vs. Shri Manik Chandra Pal & Ors. reported in AIR 2006 Cal 195 pronounced by the co-ordinate Bench of this Court.

I have perused the said decision where the order for temporary injunction granted by the learned Trial Court was challenged and the learned Appellate Court without extending any opportunity to the plaintiff stayed the operation of the order. The judgement was pronounced on a factual matrix different from the case at hand.

Here defendant challenges the *ex parte* ad interim order of injunction and not the temporary order of injunction passed by the learned Trial Court and the learned District Judge did not stay the operation of the order impugned till the disposal of the appeal. It was a limited stay till the returnable date.

In my humble opinion, there is no reason to term order impugned as perverse. There is nothing to hold that the learned Appellate Court committed jurisdictional error. Therefore, I am not inclined to invoke the jurisdiction under Article 227 of the Constitution of India.

The revisional application is disposed of.

Learned District Judge, however, is requested to consider further extension of interim stay, if any, after hearing the respondent, if possible on 10.10.2023 the date fixed before the learned District Judge without granting unnecessary adjournment to either of the parties.

Let a copy of the order be sent down to the learned Trial Court for information and necessary action.

(Siddhartha Roy Chowdhury, J.)