

14.12.2023
Sl. No. 17
Court No.2
Sandip

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

C.O. 117 of 2023

Sri Jagadish Chandra Dhar & Ors.
vs.

Sri Prabodh Kumar Mandal & Anr.

Mr. Saumyajyoti Dutta,
Mr. Gopal Sah ... for the petitioners

Mr. Tapash Kumar Bhattacharya,
Mr. Bikash Singha ... for the opposite parties.

The revisional application under Article 227 of the Constitution of India is at the instance of the defendants in a suit for confirmation of possession, the said suit being Title Suit No. 209 of 2022 is pending before the 2nd Court of learned Civil Judge(Junior Division), District – Jalpaiguri.

In the said suit the plaintiffs/opposite parties have filed an application under Order XXXIX Rules 1 and 2 of the Code of Civil Procedure.

The learned Trial Judge passed an ad interim order of injunction on the said application on May 13, 2022 restraining the defendants, their men and agents from interfering with the peaceful possession of the plaintiffs over the suit property and also from encroaching into any portion of the suit property till June 13, 2022.

This Court is informed that the said ad interim order of injunction was subsequently extended time to time.

The defendants being aggrieved by the said ad interim order of injunction, have preferred the connected Miscellaneous Appeal 27 of 2022.

The 4th Court of learned Additional District Judge, Jalpaiguri by the order impugned being order dated August 29, 2023 has affirmed the said order of the learned Trial Judge holding that the learned Trial Judge after considering all parameters, has granted ad interim order of injunction and has exercised his discretion legally and properly.

The ad interim order of injunction passed by the learned Trial Judge is bereft of any reason, the said order is liable to be set aside on the said ground alone, therefore the appeal Court below has acted with material irregularity in holding that the learned Trial Judge while granting ad interim order of injunction has considered all parameters for grant of such an order and has exercised his discretion properly.

The order impugned is not sustainable and is accordingly set aside, consequently the order of the learned Trial judge is also set aside.

The learned Trial Judge is directed to decide the said application for injunction afresh in accordance with law without being influenced by the fact that the ad interim order of injunction passed by him has not been retained by this Court.

The written objection to the application for injunction, if not already filed by the defendants, shall be filed within a week from date.

The application for injunction by its nature demands expeditious disposal, the learned Trial Judge therefore is required to dispose of it as expeditiously as possible preferably within a period of four weeks 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. 117 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.)