

06.02.2024
Sl. No.21(DL)
srm

C.O. No. 377 of 2024

Monoranjan Das

Versus

Subhra Mondal & Ors.

Mr. Dyutiman Banerjee,
Mr. Vishal Mallick

...for the Petitioner.

1. The revisional application arises out of an order dated October 18, 2023 passed by the learned Civil Judge (Senior Division), 1st Court-in-Charge at Baruipur, in Misc. Appeal No.38 of 2023.

2. By the order impugned, the prayer for ad interim injunction was refused by the learned lower appellate court. The learned lower appellate court was of the view that the learned trial Judge had rightly held that there was no urgency to pass an order of injunction, *ex parte*.

3. It appears that the plaintiff filed the suit for declaration and permanent injunction. The plaint case was that the defendant Nos.1 to 9, on the basis of an erroneous entry of their names in the record of rights, were trying to dispossess the plaintiff from the suit property. It was impossible for the plaintiff to resist the defendants who were collectively threatening to

demolish the dwelling house of the plaintiff. The allegation was that the Block Land and Land Reforms Officer, Baruipur Block was responsible for creation of illegal '*pattas*' and land records in favour of the defendant Nos.1 to 9 in respect of the property in question. The plaintiff prayed for an ad interim injunction.

4. The learned trial Judge, upon considering the case, held that it was a good case for trial. However, on the issue of grant of ad interim order, the court held that the plaintiff failed to submit any documents to prove that there was a threat of dispossession. Urgent need for a restraint order upon the defendants, could not be satisfactorily placed before the court. The documents annexed to the plaint and the averments did not give rise to any presumption of urgency, to allow ad interim prayer for injunction.

5. The plaintiff preferred a misc. appeal. The learned lower appellate court also rejected the prayer for ad interim injunction and was also of the view that the plaintiff failed to show any urgency to obtain an ad interim injunction on *ex parte* basis.

6. On these findings of facts, this Court is not inclined to pass any interim order. I have also perused the plaint case. Only because the plaintiff has mentioned that there is a threat of

dispossession, this Court cannot sit in appeal over the, *prima facie*, facts, which have been found by the learned courts below. There is nothing further on record which would show that there were attempts to dispossess the plaintiff or demolish the structures of the plaintiff.

7. Under such circumstances, the learned courts rightly held that the case was not one for grant of ad interim injunction. The defendants were required to be heard.

8. Accordingly, the revisional application is dismissed.

9. This Court finds that the contention of the plaintiff with regard to the threat of dispossession and threats of demolition of his house on the basis of the conduct of the defendant Nos.1 to 9, are matters which have to be decided at the time of hearing of the application for injunction. I do not wish to interfere with the order impugned. No special circumstances and events have been shown, with supporting materials, for grant of an urgent ex parte ad interim order of injunction.

10. At this juncture, plaintiff prays for an order allowing withdrawal of the misc. appeal. This Court, upon recording the disinclination of the plaintiff to continue with the misc. appeal and the prayer for withdrawal thereof, directs that the Misc. Appeal No.38 of 2023 be dismissed.

11. The plaintiff shall intimate the learned Civil Judge (Senior Division), 1st Court-in-Charge at Baruipur, South 24-Parganas, about the dismissal of the misc. appeal by this court.

12. The injunction application shall be heard and disposed of by the learned trial Judge, within a period of three months from the next date to be fixed the learned court, on its own merits and without being influenced by this order.

13. There shall be no order as to costs.

14. Parties are directed to act on the basis of the server copy of this order.

(Shampa Sarkar, J.)