

March 12, 2024
Sl. No.35
Court No.19
s.biswas

CO 490 of 2024

Barjahan Sheikh

vs.

Lakshindar Halder

Mr. Abdul Hamid Molla

Mr. Mukteswar Maity

Mr. Partha Pratim Roy

Md. Abdul Hakim

Ms. Nupur Chowdhury

Mr. Sahid Hamid

... for the petitioners

1. The order dated February 6, 2024 passed by the learned Additional District Judge, Diamond Harbour in Misc. Appeal No.41 of 2023 is under challenge before this court.

2. By the order impugned, the learned court rejected an application under Section 151 of the Code of Civil Procedure filed by the petitioner, praying for dismissal of the misc. appeal on the ground that the appeal was not maintainable. The question raised by the petitioner was that the order passed on November 29, 2023 was not an appealable order as per the provision of Order 43 of the Code of Civil Procedure.

3. Reliance was also placed on the decision of the learned advocate appearing for the petitioner in the misc. appeal. The opposite party contended before the learned appellate court that according to the Order 43 Rule 1(r) of the Code of Civil Procedure, the order of refusal to grant ad interim injunction was

an appealable order. In support of such contention, several decisions were relied upon.

4. In the order passed by the learned trial judge in Title Suit no.391 of 2023, it was held that materials on record reflected that the plaintiff had failed to establish a prima facie case.

5. Considering the nature of the suit and for proper adjudication of the dispute, both the parties were required to be heard. If any order was passed without giving the defendant an opportunity of hearing, the defendant would be prejudiced. Thus, the prayer for ad interim injunction was refused.

6. The learned appellate court relied on the provision of Order 43 Rule 1(r) of the Code of Civil Procedure and Section 104 of the Code. Reliance was also placed on the decision of the Hon'ble High Court in the matter of **Kamalendu Chanda vs. Dilip Kumar Biswas** reported in **85 CWN 1025** and **Motilal Singh vs. Shib Chandra Bose** reported in **75 CWN 233**. The appellate court arrived at the finding that an ex parte order either granting or refusing an injunction, was an appealable order.

7. Further reliance was placed on the decision **A. Venkatasubbiah Naidu v. S. Chellappan and Ors.** reported in , **(2000) 7 SCC 695** and it was held that the appeal was maintainable in law.

8. Under such circumstances, I do not find any reason to interfere with the order impugned. As it is well established by judicial precedence and has been provided for in the Code of Civil Procedure, an order of refusal of an ad interim injunction, is an appealable order.

9. Under such circumstances, nothing remains to be decided in the revisional application. The revisional application stands dismissed. The learned appellate court is requested to dispose of the misc. appeal expeditiously, preferably within a period of two months from the date communication of this order and the petitioner is at liberty to approach the learned court for preponement of the date, upon notice to the opposite party.

10. All the parties are directed to act on the basis of the server copy of the order.

11. Urgent Photostat certified copies of this order, if applied for, be made available to the parties upon compliance with the requisite formalities.

(Shampa Sarkar, J.)