

Item No.37
30.04.2024
Court. No. 19
GB

C.O. 779 of 2024

M/s. Designers Bay
Represented by Smt. Usri Singh (Roy)

Vs.

Hawai Co-operative Housing Society Limited & Ors.

Mr. Balai Lal Sahoo

...for the Petitioner.

1. By the order dated December 20, 2023, passed by the learned District Judge-in-Charge, South 24 Parganas at Alipore in Title Appeal No.108 of 2023, the prayer for stay of the judgment and decree was refused by the learned judge on the ground that no urgency had been made out. The learned court directed service of the notice of appeal upon the respondents therein.
2. Mr. Sahoo, learned advocate appearing on behalf of the plaintiff/petitioner submits that the order rejecting the plaint suffered from error apparent on the face of record. The petitioner, as a plaintiff, was engaged by the cooperative society to carry out construction. The petitioner engaged the defendant nos.4 to 6 for such construction work. Due to disputes and differences between the petitioner and the society, the society directly engaged the defendant nos.4 to 6. Hence, the suit was filed for declaration and permanent injunction.
3. It is submitted that the provisions of Section 102 of the West Bengal Cooperative Societies Act would not be applicable as the disputes involved in the suit was neither

between the members of the society nor between the society and the management.

4. Admittedly, the plaint has been rejected. The plaintiff has availed of the remedy under the law by filing Title Appeal No.108 of 2023. In the said appeal, plaintiff prayed for stay of the judgment and decree.
5. In my opinion, the learned court rightly rejected the prayer at the stage when it was made and stay of a judgment and decree would not bring the suit back to its life.
6. The contention of Mr. Sahoo is that rampant construction was going on by third parties and if the construction was completed, the appeal would become infructuous. Such contention was not the subject matter of the application filed before the learned court. Thus, if the petitioner/appellant did not pray for appropriate orders before the learned court, no occasion would arise for this court to pass such orders.
7. Under such circumstances, this Court does not find any reason to interfere with the order impugned. The petitioner is at liberty to make appropriate prayers before the learned court by filing an appropriate application and the learned court shall decide such application in accordance with law, on the basis of the urgency pleaded.
8. This order shall not be construed as an observation of this Court on the merits of the submissions made by Mr.

Sahoo. The application shall be decided on its own merits and on contest.

9. Accordingly, the revisional application is disposed of.
10. However, there will be no order as to costs.
11. All the parties are directed to act on the basis of the server copy of this order.

(Shampa Sarkar, J.)