

Item No.202 (M.L)
13.11.2024
Court. No. 5
S.Kundu

C.O. 1102 of 2024

Sri Rasu Santra
Vs.
Sri Ashoke Santra & Ors.

Mr. Animesh Paul,
Ms. Susmita Ghorui

...for the Petitioner.

1. Challenging *inter alia*, the order dated 22nd December, 2023 in Miscellaneous Appeal No. 154 of 2019 passed by the Additional District Judge, Fast Track Court – II, Howrah arising out of Order No. 02 dated 27th August, 2019 passed by learned Civil Judge (Junior Division), 6th Court, Howrah in Title Suit No. 981 of 2019, the instant revisional application has been filed by the petitioner.
2. The defendant no. 2/petitioner would submit that in a suit for declaration and injunction filed by the plaintiffs/opposite parties, an application was also filed under Order XXXIX Rules 1 and 2 seeking *ex parte* ad interim injunction.
3. Since *ex parte* ad interim injunction was refused, the above miscellaneous appeal was filed. In connection therewith, an injunction application was also filed. According to the petitioner, since the learned District Judge, Howrah refused to pass any ad interim order of

injunction, a civil revisional application was filed which was registered as CO 3431 of 2019. Considering the case made out by the plaintiff, by an order dated 4th August, 2021, a coordinate Bench of this Court was *inter alia*, pleased to pass an ad interim injunction restraining the defendants from demolishing the suit property till disposal of the injunction application pending in connection with Miscellaneous Appeal No. 154 of 2019. Accordingly, the order no. 02 dated 4th September, 2019, by which the learned District Judge, Howrah had refused to pass any kind of ad interim injunction, was set aside.

4. It appears that the said miscellaneous appeal had finally been disposed of by an order dated 22nd December, 2023 by the Additional District Judge, Fast Track Court – II, Howrah by allowing the same and thereby restraining the defendants from demolishing the suit property till disposal of the injunction application.
5. Mr. Paul learned advocate representing the petitioner after arguing for some time would submit that the petitioner is interested to contest the injunction application before the Trial Court, however, the observations made by the learned Additional District Judge, Fast Track Court – II, Howrah which prejudice the petitioner's case should be set aside.

6. Having heard the learned advocate appearing for the petitioner, I find that the Additional District Judge, Fast Track Court – II, Howrah has disposed of the miscellaneous appeal on contest by passing a reasoned order and by holding that there is *prima facie* case in favour of the appellants to go for trial. He has also provided reasons for grant of the order of injunction. I may hasten to add that since the temporary injunction application is still pending, the apprehension of the petitioner is entirely unfounded.
7. Ordinarily all observations made in connection with Miscellaneous Appeal are only *prima facie*, having regard thereto there cannot be any difficulty in disposal of the temporary injunction application by the learned Court.
8. In view thereof, no interference is called for. However, considering pendency of the injunction application, I direct the learned trial court to expeditiously hear out and dispose of the injunction application preferably within a period of three months from the date of communication of this order.
9. It is made clear that the learned judge shall decide the same being uninfluenced by any of the observations made by the Additional District Judge, Fast Track Court – II, Howrah.

10. Accordingly, the revisional application stands disposed of.
11. Urgent Photostat certified copy of this order, if applied for, be made available to the parties upon compliance of the requisite formalities.

(Raja Basu Chowdhury, J.)