

M/L.22 & 23.
December 2, 2024.
MNS.

FMAT No. 358 of 2023
+
CAN 1 of 2023
With
CO No. 3943 of 2023

Ruma Dey
Vs.
Sri Raja Dutta

Mr. Siva Prasad Ghose

... for the appellant.

Mr. Partha Sarathi Das

...for the respondent.

1. The present challenge has been preferred against an order granting injunction in connection with an application for condonation of delay in preferring a petition under Order IX Rule 13 of the Code of Civil Procedure.
2. The brief facts are that a final decree was passed in a partition suit in favour of the respondent/opposite party. Against the same, pleading that the same is an *ex parte* decree, the application under Order IX Rule 13 of the Code was preferred by the present respondent along with an application for condonation of delay in filing the same.
3. During pendency of the Section 5 application, the impugned order of injunction was passed.
4. Learned counsel for the appellant contends that the court below acted illegally and without jurisdiction in granting injunction, since the application under Order IX

Rule 13 of the Code itself was not maintainable as the decree was not an *ex parte* decree. Secondly, no injunction could be passed before deciding the application for condonation of delay.

5. Such contentions are controverted by learned counsel for the respondent.

6. Be that as it may, we find from the records that for abundant caution, both an appeal and a revisional application have been preferred against the self-same impugned order since there was apparently a doubt as to what would be maintainable.

7. Since the order of injunction has been passed not in connection with a regular suit but a condonation application in connection with an Order IX Rule 13 application, we are of the opinion, upon considering the facts of the case, that a regular appeal is not maintainable against the impugned order. First, Order XLIII of the Code contemplates appeals against orders granting or refusing injunction under Order XXXIX Rules 1 and 2 of the Code. Since Order XXXIX Rules 1 and 3 envisages that the injunction order should be passed or refused in connection with a suit, as opposed to the present case, in any event, no appeal would be preferred under Order XLIII.

8. More importantly, the order of injunction has been passed not even in the Order IX Rule 13 application, but prior to that in an application for condonation of delay in filing the same, which is in any event an injunction order

passed under Section 151 of the Code and not one under Order XXXIX Rules 1 and 2 of the Code.

9. Hence, a revisional application, and not an appeal, is maintainable against the impugned judgment and order.

10. We thus dismiss FMAT 358 of 2023 along with the connected application, being CAN 1 of 2023, as not maintainable and hold that CO No. 3943 of 2023 is maintainable against the impugned order.

11. Such revisional application shall be listed next for hearing on December 9, 2024 under the heading “Application”.

12. We add a line of caution here. Although otherwise this Division Bench could not have jurisdiction for taking up civil revisions, since the revisional application was filed in connection with the appeal and has been assigned specifically to this Bench, there is no fetter for this court to take up the revisional application.

(Gaurang Kanth, J.)

(Sabyasachi Bhattacharyya, J.)