

14.03.2024
Item No.07
RP
Ct. No.7

CO 3152 of 2023

**Sri Susanta Dutta
Vs.
Sri Prasanta Dutta**

Mr. Biswajit Hazra
Mr. Archisman Sain
Sk. Nadeem Ahmed
.....for Petitioner

1. The defendant in a suit for eviction of a licensee has filed this application under Article 227 of the Constitution of India challenging the order no.52 dated 23rd March, 2023 passed by the learned Civil Judge (Junior Division), 1st Court, Bolpur. By the order impugned the application under Section 10 of the Civil Procedure Code filed by the petitioner herein stood rejected.
2. The petitioner herein filed a suit, being Title Suit No.22 of 2017, before the learned Civil Judge (Junior Division), 1st Court, Bolpur, district-Birbhum praying for declaration that the deed of gift void ab initio and for declaration of title and permanent injunction. The opposite party herein filed a suit for eviction upon revocation of license against the petitioner herein, which is registered as Title Suit No.28 of 2017 before the learned Civil Judge (Junior Division), 1st Court, Bolpur. The petitioner filed an application under Section

10 of the Civil Procedure Code praying for stay of all further proceedings of the Title Suit No.28 of 2017. The learned trial Judge after observing that the outcome of the Title Suit No.22 of 2017 is crucial, decisive and significant rejected the application for stay only on the ground that it will take a long time for final decision to be taken in Title Suit No.22 of 2017. The learned trial Judge, in the considered view of this Court, failed to apply the tests laid down under Section 10 of the Civil Procedure Code before rejecting the prayer for stay. The reasons for rejection of the application for stay is not approved by this Court

3. In spite of service, none appears to oppose this application.
4. For the reasons as aforesaid, the impugned order calls for interference and the same is liable to be set aside and is, accordingly, set aside. The learned trial Judge is directed to decide the said application for stay afresh after giving an opportunity of hearing to the respective parties and by passing a reasoned order as expeditiously as possible, preferably within a period of eight weeks from the date of communication of this order.

5. With the aforesaid observation and direction, CO 3152 of 2023 stands allowed. There shall, however, be no order as to costs.

(HIRANMAY BHATTACHARYYA, J.)