

17.09.2024
Item No.10, DL
Ct.19
A.J.

**IN THE HIGH COURT AT CALCUTTA
CIVIL REVISIONAL JURISDICTION**

C.O. 3250 of 2024

Sri Sashadhar Jana

-Vs-

Sri Nikhil Mondal

Mr. Tanmoy Mukherjee,
Mr. Souvik Das,
Mr. Rudranil Das,
Mr. Tapas Chatterjee.

.....for the petitioner.

Mr. Sounak Bhattacharya,
Mr. Sounak Mandal,
Mr. Anirban Saha Ray.

.....for the opposite party.

The instant application under Article 227 of the Constitution of India is at the instance of the sole defendant in a suit for declaration of easement right over the schedule 'Ka' property, the alleged pathway.

The said suit being Title Suit No. 49 of 2021 is pending before the 1st Court of the learned Civil Judge (Junior Division) at Contai, District : Purba Medinipur.

The learned Trial Judge, by the Order No.2 dated March 05, 2021 had allowed the prayer of the plaintiff for an ad-interim order of injunction thereby directing the parties to maintain *status quo* in respect of the nature and character of the suit schedule 'Ka' property till April 05, 2021 and by the selfsame order, had allowed the prayer of the plaintiff for appointment of an Advocate Commissioner *ex-parte* for holding local inspection of the said Schedule 'Ka' property.

The plaintiff thereafter had filed an application under Section 151 of the Code of Civil Procedure for mandatory injunction for restoration of the said pathway alleging that the same has been damaged by the petitioner.

The learned Trial Judge by the Order No. 141 dated July 04, 2024 had directed the defendant to construct the said pathway within ten days from the date of the said order, aggrieved thereby, the defendant has preferred the connected Misc. Appeal No.15 of 2024 which is pending before the 1st Court of the learned Civil Judge (Senior Division), Contai, District : Purba Medinipur.

The Appeal Court below, following the ratio of law laid down by this Court in the case of ***IN RE: GOUTAM KUMAR HADA*** reported in (1994) 1 ILR 72 and in the case of ***MOBASSOR HOSSAIN & ORS vs. SRI MANIK CHANDRA PAL*** reported in (2005) 2 CLJ 482(CAL), by the order impugned dated August 19, 2024 has refused to stay the operation of the order under challenge during the pendency of the said appeal, as prayed for by the petitioner.

Generally, stay of operation of an order of injunction, during the pendency of the appeal challenging the said order, amounts to allowing of the appeal itself at the threshold, that is the principle laid down in the aforementioned two decisions of this Court.

Appeal Court's power to grant stay during the pendency of the appeal is *always fact-specific*. In an appeal where an order of mandatory injunction is under challenge, refusal to grant stay of the said order would render such appeal infructuous, therefore, the order impugned is not sustainable and is accordingly set aside.

The operation of the order under challenge in the said miscellaneous appeal shall remain stayed till the disposal of the said appeal.

However, in view of the nature of the order under challenge in the said appeal, the Appeal Court below is requested to dispose of the said appeal as expeditiously as possible in accordance with law and in doing so, shall not entertain the prayer of the parties for any unnecessary adjournment.

It is made clear that this Court has not gone into the merit of the right and claims of the parties, the Appeal Court below shall decide the same in accordance with law.

C.O. 3250 of 2024 is disposed of with the above terms without any order as to costs.

Urgent Photostat certified copies of this order, if applied for, be supplied to the parties subject to compliance with all requisite formalities.

(Biswajit Basu, J.)