

IN THE HIGH COURT AT CALCUTTA
CIVIL REVISIONAL JURISDICTION
APPELLATE SIDE

CO 3476 of 2022

Padma Sarkar & Ors.
Vs.
Chhakina Bibi & Ors.

Mr. Subhasish Sengupta
Mr. Bishajib Ghosh
Mr. Avirup Chatterjee
Mr. Rishav Das
... For the petitioners

Mr. Satyam Mukherjee
Ms. Sayani Ahmed
Mr. Purnendu Shekhar Ghosh
... For the opposite party nos.1, 2 & 3

1. The order dated 16th February, 2021 passed in Misc. Appeal No.18 of 2022 by the learned Additional District Judge, Fast Track Court-5, Barasat, has been assailed in this revisional application.

2. Learned Appellate Court dealt with an application for extension of interim order dated 16th February, 2021 wherein the learned Appellate Court after due deliberation passed an ad interim order of injunction which was refused by the learned Trial Court by the order dated 7th February, 2022. Learned Appellate Court promulgated the injunction order restraining the respondents/opposite parties herein from causing any hindrance in respect of peaceful possession of the appellants over the suit property for a particular period, i.e., till 15th March, 2022 and by the impugned order he

refused further extension of that particular interim order on the ground that the plaintiffs/petitioners herein were no longer in possession on account of transfer of their portion of the property.

3. At this stage, both the learned counsel appearing on behalf of the parties to this revisional application have submitted that necessary order may be passed for hearing of the injunction application under Order XXXIX Rules 1 and 2 of the Code of Civil Procedure (in short, CPC) pending before the learned Trial Court and interim order passed by this Court by the order dated 24th November, 2022 be continued till the disposal of the injunction application as the suit is pending before the learned Trial Court since 2022.

4. Having heard learned counsel appearing on behalf of the parties to this revisional application as well as the records, including the order dated 24th November, 2022, it appears that this Court after admitting the revisional application, promulgated an order of stay of operation of the impugned order passed by the learned Appellate Court and also passed an order restraining the respondents/defendants from causing any hindrance in respect of peaceful possession of the appellants over the property mentioned in the schedule to the plaint for a particular period and subsequently it was extended.

5. Having regard to the submission advanced on behalf of the parties to this revisional application as well

as all the facts and circumstances discussed above, I am of the humble opinion that the learned Trial Court should be requested to dispose of the application under Order XXXIX Rules 1 and 2 of the CPC and thereafter to proceed with the suit which is pending since 2022.

6. From the record, it appears that the Misc. Appeal No.18 of 2022 was filed before the learned District Judge, Barasat and in turn it was transferred to the learned Additional District Judge, Fast Track Court-5, Barasat for disposal. The Misc. Appeal was preferred assailing the order of refusal of ad interim junction and by the order impugned, the learned Appellate Court passed an interim order of injunction restraining the respondents from causing any hindrance in respect of peaceful possession of the appellants/plaintiffs over the suit property.

7. In the aforesaid view of the matter, I find that further proceeding with the Misc. Appeal before the learned Additional District Judge, Fast Track Court-5, Barasat will be a futile effort while the injunction under Order XXXIX Rules 1 and 2 of the CPC is awaiting for disposal by the learned Trial Court.

8. Thus, the learned Trial Court is requested to dispose of the application under Order XXXIX Rules 1 and 2 of the CPC after hearing both sides and also liberty should be given to the defendants/opposite parties herein to file their written objection to the injunction application under Order XXXIX Rules 1 and 2 of the CPC.

9. Till the disposal of the injunction application by the learned Trial Court, the interim order passed by this Court on 24th November, 2022 shall remain in force.

10. Learned Trial Court is further requested to dispose of the application under Order XXXIX Rules 1 and 2 within four weeks from the date of communication of this order, without being influenced by any of the observations made hereinabove.

11. In view of the observation made hereinabove, the Misc. Appeal No.18 of 2022 stands disposed of.

12. With the aforesaid observations, the revisional application, being CO 3476 of 2022, stands disposed of.

13. Learned advocates appearing on behalf of the parties are at liberty to bring this order to the notice of the learned Trial Court forthwith.

14. All parties shall act on the basis of a server copy of this order duly downloaded from the official website of this Court.

15. Urgent photostat certified copy of this order, if applied for, be given to the parties, upon compliance of necessary formalities.

(Bibhas Ranjan De, J.)