

03.01.2024
Sl. No.5(DL)
srm

C.O. No. 3997 of 2023

With

CAN 1 of 2023

Shri Surajit Lahiri

Versus

**The President, Governing Body,
JIS College of Engineering & Ors.**

Mr. Surajit Lahiri ... Petitioner-in-person.

Mr. Arijit Sarkar,
Ms. Prajaaini Das
...for the Cavetor/Opposite Party No.3.

The petitioner is aggrieved by an order dated August 22, 2023 passed by the learned Civil Judge (Senior Division), 3rd Court at Barasat, North 24-Parganas.

By the order impugned, the learned court rejected an application for recalling of the order dated April 11, 2022, on the ground that the court did not have the inherent power to recall or modify or correct the order, which was passed.

By the order dated April 11, 2022, the learned trial Judge had rejected an application for temporary injunction filed by the petitioner, on the ground that there were multiple prayers which were contrary to Rule 20(3) of the Civil Rules and Orders. The court held that in the application for temporary injunction, the petitioner had categorised main prayers along

with consequential prayers which were not permissible in law. The petitioner was granted liberty to file a fresh application for temporary injunction. Accordingly, the petitioner filed another application for temporary injunction, with modified prayers, but the said application was rejected. After rejection of the said application, the petitioner filed an application under Section 151 of the Code of Civil Procedure, asking the learned trial Judge to recall the order dated April 11, 2022 and proceed to with the hearing of the earlier injunction application, with the multiple prayers and reliefs. The petitioner claimed that even at the interlocutory stage, prayers in the form of mandatory injunction could be incorporated in the application.

This Court is of the view that the order dated April 11, 2022 merged with the order passed on November 30, 2022. The learned court went into the case and counter-case of the parties and was of the view that the issues involved could not be decided without trial. The entire disciplinary proceeding, as also the order of suspension and dismissal from service, were under challenge in the suit. The dismissal order had taken effect soon after the issuance of the suspension order and as such there was no scope for grant of any injunction restraining the defendants from withholding the subsistence allowance. According to the learned court, when the entire procedure was

disposed of and there was no ongoing enquiry. The court held that the question of granting temporary injunction, or a restraint order upon the authorities, would not arise. The reliefs prayed for in the application for temporary injunction were in the nature of final reliefs and thus the application for temporary injunction was rejected without passing any orders in favour of the petitioner. *Prima facie*, the court did not find that the authorities had acted in violation of the principles of natural justice while conducting the enquiry. The allegations of the petitioner were to be proved in trial. It was observed that in case the petitioner succeeded in the suit, he would be entitled to his arrear dues and the service as well. The balance of convenience and inconvenience was in favour of not granting an order of injunction.

The order dated November 30, 2022 is an appealable order and the petitioner is at liberty to file a misc. appeal in accordance with law against the order dated November 30, 2022. The learned court was right in holding that the inherent power under Section 151 of the Code of Civil Procedure could not be invoked to recall the order dated April 11, 2022, as in my view, the petitioner had already acted in terms of the order dated April 11, 2022 and had filed an application for temporary injunction which was contested by the parties and

disposed of on merits. The earlier application cannot be revived at this stage.

The misc. appeal shall be decided, in accordance with law. The prayer for stay of the suit shall also be decided in the misc. appeal, on the petitioner filing an application of such nature.

The revisional application is, thus, disposed of.

In view of disposal of the revisional application, the connected application has become infructuous and the same is disposed of accordingly.

There shall be no order as to costs.

Parties are directed to act on the basis of the server copy of this order.

(Shampa Sarkar, J.)