

April 18, 2024
Sl. No.36
Court No.19
s.biswas

CO 4135 of 2023

Sk. Nazrul Haque

vs.

Lalmohan Bera and others

Mr. Probal Kr. Mukherjee, Sr. Adv.

Mr. Varun Kothari

Mr. Subhrangshu Maiti

... for the petitioner

Mr. Manik Das

... for the opposite party no.1

1. The revisional application arises out of an order dated October 19, 2023, passed by the learned Additional District Judge, 2nd Court at Sealdah in Misc. Appeal No.73 of 2023.
2. By the order impugned, the learned court rejected the prayer for stay of the ad interim order of injunction. According to the learned appellate court, there was no urgency to allow such stay as a case of irreparable loss and injury could not be attributed to the developers Farrukh Samin and Samir Alam. The petitioner claims to be the assignee of the developers and submits that the injunction has interfered with the development work and developer suffers day to day loss.
3. Mr. Das, learned advocate appearing for the opposite party no.1, opposes the submission of Mr. Mukherjee, learned senior advocate.
4. Heard the parties.

5. In the decision of ***Gautam Kumar Heda vs. State*** reported in ***1994(1) ILR 72***, it has been held that normally in a misc. appeal, at the interim stage, the ad interim order of injunction passed by a learned trial court should not be stayed as such stay would amount to disposal of the Misc. appeal itself.
6. In this case too, a similar prayer has been made by Mr. Mukherjee's client. Although Mr. Mukherjee submits that the principle laid down in ***Gautam Kumar*** (supra) is not an absolute rule and there may be exceptions in my opinion, justice would be subserved, if the learned trial court is directed to dispose of the injunction application on its own merits along with the application under Order 39 Rule 4 of the Code of Civil Procedure, filed by the petitioner.
7. In view of the discussion hereinabove, the Misc. appeal is dismissed as infructuous and the parties shall agitate the question of grant or non-grant of temporary injunction, on the basis of their applications objections and documents.
8. With this order, the revisional application stands disposed of. The respective parties are at liberty to file their objection to the application under Order 39 Rule 4 of the Code within a period of two weeks from date. The application for

injunction along with the objection filed thereto, shall be disposed of within three months.

9. All the parties are directed to act on the basis of the server copy of the order.
10. Urgent Photostat certified copies of this order, if applied for, be made available to the parties upon compliance with the requisite formalities.

(Shampa Sarkar, J.)