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21.05.2024.
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**Calcutta High Court
In the Circuit Bench at Jalpaiguri
Appellate Side**

CO 82 of 2024

**Sri Ankit Kumar Kedia
-versus
Sri Parimal Sarkar & Ors.**

Mr. A.L. Chakravorti
Mr. Bapi Sarkar
Mr. Chayan Moni Bhowal
Mr. Gourav Mandal

....for the petitioner

The petitioner is the first defendant in a suit for declaration that a deed is false, fabricated, null and void and the defendant has no right, title and interest in the suit land and permanent injunction filed by the opposite party no.1 before the Court of the learned Civil Judge, Junior Division-1 at Jalpaiguri.

In the said suit, the opposite parties filed an application inter alia praying for temporary injunction under Order XXXIX Rule 1 and 2 read with Section 151 of the Code of Civil Procedure, 1908 (in short CPC) and obtained an ex parte order of injunction on 21st February, 2024.

The petitioner, on having received notice of the injunction application, filed an application under the provisions of Order XXXIX Rule 4 read with Section 151 of CPC for vacating the ex parte interim order. This

application was filed on 7th May, 2024 and was sought to be moved on that day itself by filing put up petition.

It is the case of the petitioner that the learned Civil Judge, Junior Division, 1st Court at Jalpaiguri failed to appreciate the urgency of the matter and as such has posted the hearing of the said vacating application on 18th July, 2024 when the injunction application is also fixed for hearing.

The petitioner says that the provisions of Order XXXIX Rule 3A of CPC provides for deciding an injunction application within one month in a case where ex parte ad interim order of injunction has been passed. The learned Court, therefor, was obliged to hear out the petitioner's application as expeditiously as possible. The learned Court, therefor, has failed to exercise a jurisdiction vested in it or have exercised its jurisdiction with material irregularity. The order impugned dated 7th May, 2024 is, therefor, liable to be set aside.

On a perusal of the order sheets, it appears that the ex parte interim order dated 21st February, 2024 was initially passed till 22nd March, 2024 and the matter was made returnable on 4th April, 2024. On 4th April, 2024 the petitioner, being the defendant no. 1, in the suit appeared and was permitted to file a vakalatnama. The petitioner also filed an application praying for time to file written objection and written

statement. The interim order was therefor, extended and the application has been made returnable on 18th July, 2024. The petitioner's application for vacating the interim order has also been directed to appear on 18th July 2024.

After hearing the petitioner and considering the materials on record, I think justice will be sub-served if I direct the petitioner to file his affidavit-in-opposition to the main injunction application by 5th June, 2024. Reply, if any, thereto by 19th June, 2024.

The opposite parties shall be free to use affidavit in the petitioner's application for vacating the interim order. Such opposition may be filed by 10th June, 2024. Reply, if any, thereto by 19th June, 2024.

The date of hearing of the main injunction application as also the petitioner's vacating application is preponed and shall be heard on 25th June, 2024.

A copy of this order shall be communicated by the petitioner to the opposite parties and also filed before the Court of the learned Civil Judge, Junior Division, 1st Court, Jalpaiguri.

The Registry of the Circuit Bench is directed to send a copy of this order to the office of the learned Civil Judge, Junior Division, 1st Court, Jalpaiguri for necessary compliance.

Nothing further remains to be adjudicated in this revisional application. The same is accordingly disposed of.

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

(Arindam Mukherjee, J.)