

IN THE HIGH COURT AT CALCUTTA

CIRCUIT BENCH AT JALPAIGURI

(Civil Revisional Jurisdiction)

APPELLATE SIDE

Present:

The Hon'ble Justice Ajoy Kumar Mukherjee

C.O. 90 of 2024

Sri Rajiv Mehta

Vs.

Smt. Shrabani Chowdhury

For the Petitioner : Mr. Sudipta Kumar Mazumder
Mr. Subhankar Dutta

For the opposite party : Mr. Subhasish Ghosh,
Mr. Anirban Banerjee

Order dated : 11.07.2024

Ajoy Kumar Mukherjee, J.

1. Petitioner in this application has contended that he has instituted suit for declaration, injunction and consequential reliefs before learned civil judge (Junior Division) at Siliguri which was registered as T.S. No. 124 of 2023. On the date of institution of the suit, the petitioner also moved an application seeking exparte ad-interim order of injunction against the defendant, but the court below was refused to grant exparte order of injunction, as one caveat was lodged by the opposite party/caveator. It is further submitted that thereafter when the petitioner went to serve the copy

of the case-papers upon the learned advocate for the caveator, he refused to accept the same. The petitioner thereafter sent case papers to the opposite parties through registered post and on the expiry of 15 days from the receipt of said case papers, the petitioner moved temporary injunction before the court below on 26th July 2023, when the court below was pleased to allow the application for temporary injunction.

2. Thereafter the opposite party submitted an application under Order XXXIX rule 4 of the Code of Civil Procedure on 31st July, 2023 with a prayer for revoking the order of temporary injunction on the ground, that notice of injunction had mentioned a wrong date and also on the ground that petitioner had suppressed the fact of filing writ petition in connection with the same dispute and orders passed therein.

3. The main grievance ventilated by the petitioner herein is that the learned court below passed the impugned order of revoking the earlier order of temporary injunction mechanically, without appreciating the fact that opposite parties ought not to have allowed to participate in the proceeding which was supposed to proceed exparte against them and that the court below erroneously shifted the error committed by the court staff upon Junior Advocate of the petitioner, leveling allegations against Advocate, which is totally uncalled for.

4. It is further submitted that the petitioner herein thereafter on 24th August, 2023 moved an application under section 151 of the code of Civil Procedure for recalling the said order, but the court below has kept it pending since then.

Decision

5. Beside being the fact that if this High Court decides the injunction Application on merit, parties will have a chance to loose a forum, it also appears that by the impugned order, the court below was pleased to vacate the injunction order dated 26.07.2023 not on merit but on the ground that the requisites of notice to show cause was not filed in accordance with the direction of the court and I find that he has fixed next date for hearing the injunction petition afresh giving opportunity to both the parties to contest.

6. Moreover, learned counsel appearing on behalf of the opposite parties is substantially correct in submitting that if the plaintiff/petitioners got aggrieved by the order whereby the court below had vacated order of injunction on the basis of the defendants application under Order XXXIX rule 4, the petitioner ought to have preferred appeal before the appropriate forum.

7. In this context it is to be recorded that undoubtedly when plaintiff petitioner is aggrieved by an order passed in connection with defendant's application under order XXXIX Rule 4, the plaintiff petitioner has an equal efficacious remedy before the Appellate court under order 43 rule 1(r) of the Code of Civil Procedure.

8. I am not unmindful to principle of law that mere availability of an alternative remedy of appeal or revision does not oust High Court's jurisdiction and render a writ petition not maintainable. But there is always a distinction between maintainability of an application and entertainability of an Application. It is well settled that the High Court under Article 227 of the constitution have little scope to interfere with the orders of the

subordinate courts as a matter of routine. The right cannot be taken as right of another appeal to the aggrieved party. From the facts and circumstances of the case I am of the view that the order impugned passed by the Trial Court in fixing another date for hearing injunction application afresh has not resulted in any gross or manifest failure of justice nor has there been any illegality or perversity committed by the court below while passing the order impugned. Accordingly order impugned, so far it relates to its decision of adjudicating temporary injunction afresh after giving opportunity to both the parties to contest, does not call for interference by this court invoking Article 227 of the constitution of India.

9. In such view of the matter **C.O. 90 of 2024** stands dismissed.

10. However, this order will not preclude the petitioner to prefer appeal before the appellate forum under order 43 rule 1 (r), if the petitioner so chooses against the impugned order and point of limitation will not be a bar in preferring such application. It is also made clear that I have not gone into the merit of the injunction application and the court below or the appellate court while disposing such application shall not be influenced by any observation made herein.

Urgent certified copy of this judgment, if applied for, be supplied expeditiously after complying with all, necessary legal formalities.

(Ajoy Kumar Mukherjee, J.)