

Sl 42
30.06.2025
Court No.6
BP

C.O. 2223 of 2025

Sri Chanchal Chatterjee
-versus-
Smt. Parna Das & Ors.

Mr. Tanmoy Mukherjee
Mr. Souvik Das
Mr. Rudranil Das
... for the petitioner

Mr. Ayan Kumar Borah
Mr. Sabyasachi Bhattacharjee
Mr. Suman Nandi
..for the opposite party
Nos. 1, 2 and 3

On the prayer of Mr. Mukherjee, learned advocate appearing for the petitioner, leave is granted to the learned on record of the petitioner to file an affidavit of service in course of this day.

This application under Article 227 of the Constitution of India is at the instance of a complainant and is directed against an order being no.2 dated 15th May, 2025 passed by the learned Civil Judge (Junior Division), 4th Court at Serampore, Hooghly in Misc. Appeal No. 06 of 2025.

Pursuant to an order passed in a writ petition, a proceeding under Section 218 of the West Bengal Municipal Act, 1993 was initiated and an order of demolition was passed on 21st April, 2025. Challenging the said order of demolition the opposite party nos. 1, 2 and 3 herein filed the Misc. Appeal No. 6 of 2025 before the learned Civil Judge (Junior Division), 4th Court at

Serampore, Hooghly. The petitioner lodged a caveat in the said appeal.

The grievance of the petitioner is that in spite of the fact that the caveat was lodged by the petitioner herein, an order of stay was passed without giving any opportunity to the petitioner to contest the prayer for stay.

Mr. Mukherjee, the learned advocate for the petitioner draws the attention of the Court to a decision of the Hon'ble Division Bench in FMA 711 of 2025 in the case of Gayatri Chetna Foundation vs. Sri Manoj Joshi and others in support of his contention that if a caveat was lodged before the order was sought, the Court ought to have afforded an opportunity of hearing to the party who has lodged such caveat.

It is not in dispute that a caveat was lodged by the petitioner. The learned Civil Judge (Junior Division), 4th Court at Serampore, Hooghly allowed the application under Section 151 of the Code of Civil Procedure without directing the opposite parties to serve a copy upon the caveator and passed the order of stay by observing that there is no caveat on the part of the Dankuni Municipality.

A person lodging a complaint against illegal construction is a necessary party in a proceeding arising out of an order of demolition. When such a party had lodged a caveat, the learned Civil Judge ought not to have passed an order of stay without directing service of the

stay application upon the caveator. It appears that the application under Section 151 of the Code of Civil Procedure was allowed without affording an opportunity of hearing to the petitioner.

The purpose behind lodging a caveat is that the caveator is claiming a right to appear at the hearing of the application for interim order and oppose the prayer for interim order.

The Municipality may not have lodged a caveat. That cannot be a ground to disregard the right of the party who has lodged a caveat to appear and contest the prayer for interim relief.

The Hon'ble Division Bench in Gayatri Chetna Foundation (supra) held that sub-section (1) and (3) of Section 148A of the Code of Civil Procedure mandates the Court to direct service of a notice on the caveator.

Such mandate of Section 148A has not been followed in the case on hand.

For such reason, the application under Section 151 of the Code of Civil Procedure dated 14th May, 2025 stands restored to the file of the learned Civil Judge (Junior Division), 4th Court at Serampore, Hooghly.

The learned advocates appearing for the respective parties uniformly submit that 9th September, 2025 has been fixed for hearing.

Since 9th September, 2025 has been fixed for hearing, the petitioner shall file a written objection to the

stay application, if any on or before 15th July, 2025 upon serving an advance copy of the same to the learned advocate for the opposite party nos. 1, 2 and 3.

The learned Civil Judge (Junior Division), 4th Court at Serampore, Hooghly is directed to decide the application under Section 151 of the Code of Civil Procedure filed on 14th May, 2025 afresh after giving an opportunity of hearing to the petitioner herein, the Municipality as well as the appellants in Miscellaneous Appeal No. 6 of 2025 and passed a reasoned order in accordance with law.

In the impugned order it has been recorded that the stay of the execution notice has been passed till the next date. It is further observed that the order of stay shall not be further extended without hearing the petitioner herein.

With the above observations and directions, C.O. 2223 of 2025 stands disposed of.

There shall be, however, no order as to costs.

Urgent certified photocopy of this order, if applied for, be supplied to the parties expeditiously on compliance of usual legal formalities.

(Hiranmay Bhattacharyya, J.)