

09.12.2019

rpan/01
Ct. No.01

CALCUTTA HIGH COURT

In the Circuit Bench at Jalpaiguri

C.O. 84 of 2019

Anil Paul
-Vs-
Ashutosh Das

Mr. Hirak Barman,
Mr. Momenur Rahman
... for the petitioner.

Ms. Suman Snehanabis,
Ms. Arpita Saha
... for the opposite party.

The present application under Article 227 of the Constitution of India has been preferred challenging an order dated 27th August, 2019 passed by the learned Additional District Judge, 3rd Court, Cooch Behar in Title Appeal no.05 of 2017.

Mr. Barman, learned advocate appearing for the petitioner submits that the plaintiff/opposite party did not take appropriate steps for impleading necessary parties and such omission could not have been rectified by the learned lower Appellate Court (in short, the learned Court) after the matter was fixed for delivery of judgment. The opposite party did not file any application before the learned Court seeking addition of Cooch Behar Municipality (in short, the said Municipality). The said Municipality also does not have any interest in the suit property and as such the direction upon the opposite party to implead the said Municipality suffers from a jurisdictional error and is not sustainable in law. In support of such contention, reliance has been placed

upon the judgments delivered in the case of *Teria Tea Co. Pvt. Ltd. Vs. Kumkum Mittal and Others*, reported in *AIR 1994 Cal. 191.* and *Anokhe Lal Vs. Radhamohan Bansal and Others*, reported in *AIR 1997 SC 257*.

Referring to the provisions of Order 41 Rule 20 of the Code of Civil Procedure (in short, the said Code), he submits as the said Municipality was not a party to the suit and is not interested in the result of the appeal, the learned Court erred in law in directing the opposite party to implead the said Municipality in the appeal.

Per contra, Ms. Suman Snehanabis, learned advocate appearing for the opposite party submits that under the provisions of Order 1 Rule 10(2) of the said Code, the Court may at any stage in the proceedings either upon or without application of either party direct a person, whose presence is necessary for effectual and complete adjudication of the matter, to be added. In support of such contention, she has placed reliance upon the judgments delivered in the case of *Thomson Press (India) Ltd. Vs. Nanak Builders and Investors Private Ltd. and Others*, reported in (2013) 5 SCC 397, *Kisan Uchattar Madhyamik Vidyalaya Samiti, Deoria and Others Vs. IIIrd Addl. District Judge, Deoria and Others*, reported in *AIR 1989 Allahabad 168*, *State of West Bengal & Others Vs. Sudhangshu Kumar Laha & Others*, reported in *Cal. LT. 1992 (1) HC 211* and *Singheshwar Rai Vs. Babulal Rai & another*, reported in *AIR 1980 Patna 187*.

Heard the learned advocates appearing for the respective parties and considered the materials on record.

It appears that the suit was filed by the opposite party alleging *inter alia* that construction was being raised by the defendant /petitioner violating the municipal rules and regulations and a complaint to that effect was also lodged before the said Municipality and a mandatory injunction was also sought for. In the backdrop of such circumstances and for effectual and complete adjudication of the matter the learned Court was of the opinion that the presence of the said Municipality would be necessary and accordingly issued direction upon the opposite party to take necessary steps. The judgments delivered in *Teria Tea Co. Pvt. Ltd. (Supra)* and in *Anokhe Lal (Supra)* do not also speak of any curtailment of the jurisdiction of the Court to direct addition of a party for the purpose of effective adjudication.

In my opinion, the discretion as exercised by the learned Court is neither arbitrary nor perverse. The said order does not suffer from any patent error warranting interference of this Court in exercise of its jurisdiction under Article 227 of the Constitution.

Accordingly, the application, being C.O. 84 of 2019, is dismissed.

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

(Tapabrata Chakraborty, J.)