

15.12.2020
Court No. 19
Item No.6
CP

C.O. 1033 of 2020

Sri Ram Mohan Ghosh & anr.
vs.
Sri Gautam Ghosh & ors.

Mr. Siva Prosad Ghosh

....for the petitioners.

By this application, the petitioners/plaintiffs have challenged the order dated January 13, 2020 passed by the learned Civil Judge (Senior Division), 3rd Court, Barasat in Title Suit No. 982 of 2019 rejecting the application under Section 151 of the Code of Civil Procedure.

It is alleged that opposite parties 1 and 2, who are defendants 26 and 27, have been interfering with the peaceful possession of the plaintiffs and entering into the premises despite there being an ad interim order of injunction. The police report also suggests that there has been some attempt at entering into the premises. Alleging violation of the ad interim order of injunction dated December 21, 2019, the petitioners filed an application under Section 151 of the Code of Civil Procedure praying for police help. By the order impugned dated January 13, 2020, the learned Civil Judge (Senior Division), 3rd Court, Barasat, rejected the application of the petitioners with the observation

that apprehension of violation of injunction order attracts provision of Section 151 of the Code of Civil Procedure, whereas violation once committed will attract the order XXXIX Rule 2A of the Code of Civil Procedure. It is also alleged by the petitioners that the order impugned suffers from total misconception of law.

I have considered the application under Section 151 of the Code of Civil Procedure, and I find that the allegations of violation as alleged are vague and bereft of any material particulars. A stray statement that the defendants 26 and 27 were violating the order of injunction cannot be construed as exceptional situation where order for police help under Section 151 of the Code of Civil Procedure may be passed.

However, the law as laid down by the different judicial decisions is that under exceptional circumstances, the court in exercise of inherent power can grant police help if there is blatant violation of the order of injunction. Any order passed by the court has to be preserved and obeyed. This is a matter of public order and public policy and courts can direct police to ensure that its orders are complied with.

However, in this case, the petitioner has not been able to make out a case where an inherent power can be invoked for police help as the pleadings

in the application under Section 151 of the Code of Civil Procedure are insufficient and neither discloses the nature of the violation nor the date, time or place of the violation.

The order impugned is not interfered with.

However, rejection of this revisional application shall not prevent the petitioners from taking out any application under Section 151 of the Code of Civil Procedure with better particulars if the situation so arises and the same shall be heard independently by the learned court below without being influenced by any observations made herein and upon affording an opportunity of hearing to all parties. The applications, if filed, be decided expeditiously by the learned court below in accordance with law.

There shall be no order as to costs.

Urgent photostat certified copy of this order, if applied for, be given to the parties as expeditiously as possible subject to compliance of all usual formalities.

(Shampa Sarkar, J.)