

13.04.2021
Court No. 19
Item no.31
CP

C.O. 523 of 2021

Arun Kr. Agarwal & ors.

vs.

Kalpana Banerjee & ors.

(via video conference)

Ms. Sohini Chakrabarty

Ms. Prajaaini Das

.....for the petitioners.

It appears that the opposite parties 1, 2, 6 and 7 have been served with the copy of the revisional application along with the server copy of the earlier order but the other opposite parties have not been served. The postal articles have come back with the endorsement 'unclaimed'.

Ms. Chakrabarty, learned advocate for the petitioners, submits that there is no impediment in allowing the application in their absence in view of the fact that the order impugned was also passed ex parte.

This revisional application has been filed against an order dated February 8, 2021, passed by the learned Civil Judge (Junior Division), First Court at Durgapur, Paschim Bardhaman in Title Suit No. 214 of 2020. The application for police help was rejected. It appears that the learned court below rejected the said application on the ground that the

photographs could not be related to the suit premises; that the complaint to the local police station was not made and that the entire prayer for fixing the shutter was an indirect way to browbeat the defendants. It appears that the said order was passed ex parte without service upon the defendants.

The petitioners claim that the ad-interim order of injunction passed in favour of the petitioners not to evict the petitioners without due process of law forcibly, was being violated by the defendants in many ways as stated in the application itself.

A further prayer for allowing the petitioners to repair the shutter on the tenanted premises in the presence of the police was also made. The learned court below did not accept the contentions and dismissed the said application on a totally different consideration that the tenants' intention was not to pay the rent and browbeat the landlord.

In my opinion, the order has not been passed by adequately considering the contentions of the petitioners. Moreover, in my opinion, the application has to be considered in the presence of all the parties.

The order impugned is set aside.

The matter is remanded back to the learned court below for a fresh hearing upon service upon the defendants/opposite parties. The

defendants/opposite parties shall be at liberty to file their written objection to the said application and the application shall be heard on merits. If the petitioners want to rely on the photographs which, according to the petitioners, are digital photographs, then the provisions of the Evidence Act shall be resorted to for tendering the same as evidence before the learned court below.

This order is being passed only on consideration of the order impugned which does not deal with the allegations of the petitioners but this court has not decided the merits of the contentions of the petitioners with regard to the requirement of police help. That issue will be decided exclusively and independently by the learned court below on the basis of the records and evidence before it, upon giving an opportunity of hearing to all the parties.

It is expected that the said application shall be disposed of within a period of two months from the next date fixed.

Petitioners are directed to inform the defendants and also their learned advocates appearing in the court below of this order and also file appropriate application before the learned court below for fixing the date for compliance of this order.

The revisional application is disposed of. 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.)