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01.07.2021
TN

CO No.906 of 2021

(Via video conference)

Shrimati Ruma Bose
Vs.
Swapan Kumar Bose and others

Mr. Aritra Shankar Ray,
Mr. Rabindranath Mahato

.... for the petitioner

Mr. Partha Pratim Roy

.... for the opposite party no.1

The wife/petitioner contends that both the courts below have refused the injunction sought for by the petitioner, regarding restraint of the contesting opposite parties from disturbing the peaceful possession and enjoyment of her matrimonial home by the petitioner.

The primary ground of such refusal by the trial court as well as the appellate court was that Section 41 (h) of the Specific Relief Act debars such a prayer, since the statutory forum has already granted similar injunction under the Protection of Women from Domestic Violence Act, 2005. It is

contended by learned counsel for the petitioner that, despite such order of the other forum, the contesting opposite parties are not complying therewith and continuing to disturb the petitioner's possession till date, for which the petitioner was compelled to move the injunction application independently before the civil court.

It is seen from the records as well as the submissions of the parties that the plaintiff/petitioner took out a different proceeding before an alternative forum and had undoubtedly obtained an injunction order protecting her possession and enjoyment regarding the shared household. However, it is specifically alleged that, even thereafter, the contesting opposite parties have been disturbing such possession. Since the suit was filed for declaration of the right to residence as well as ancillary reliefs, the injunction sought before the civil court is squarely in aid of the final relief sought in the suit.

It is well within the powers of the civil court to grant injunction under Order XXXIX Rules 1 and 2 of the Code of Civil Procedure, in the event such injunction is deemed necessary upon the settled legal yardsticks being satisfied.

Since, in the present case, the petitioner and her daughter are residing at the suit property, which is incidentally the matrimonial home of the petitioner, the courts below acted palpably without jurisdiction in refusing injunction by citing Section 41(h) of the Specific Relief Act, 1963, primarily for two reasons:

(i) Injunction is a continuing relief, in view of the nature of the cause of action therefor being continuous in nature, arising *de die in diem*;

(ii) The two statutes, that is, the Protection of Women from Domestic Violence Act and the right to maintenance available to the petitioner before the civil court, operated in different fields and cannot be treated to be alternative reliefs to each other, more so since the forum under the said Act is not competent to grant the decree sought before the civil court.

In such view of the matter and since the right of maintenance, which includes the right to residence, has also been recognized under general law such as Section 39 of the Transfer of Property Act, even apart from the matrimonial laws, and the petitioner has made out a strong *prima facie* case to go for trial as well as the balance of convenience and inconvenience is in favour of the petitioner, the

courts below ought to have granted such injunction to the petitioner.

In the present case, the petitioner and her daughter, who are allegedly deprived of any maintenance, at least after September, 2020, would suffer irreparable injury in the event they are driven out from their matrimonial home, which is the suit property. Considerable urgency has also been made out by the petitioner in view of the specific allegations of contravention of an existing order of injunction passed by a different forum.

In view of the above discussions, CO No. 906 of 2021 is allowed, thereby setting aside the judgment and order dated January 30, 2021 passed by the District Judge at Howrah in Miscellaneous Appeal No.252 of 2018, thereby affirming the order passed by the Civil Judge (Junior Division), Fourth Court at Howrah in Title Suit No.78 of 2014.

The contesting opposite parties are now restrained by an order of injunction, till disposal of Title Suit No.78 of 2014, from disturbing the peaceful possession and enjoyment of the petitioner and her daughter in respect of the property-in-suit. It is expected that the trial court disposes of the

suit itself as expeditiously as possible, since the same is pending from the year 2014.

Keeping in view the pandemic times and the associated difficulties being faced by the judicial officers in the District Courts, the Trial Judge is requested to dispose of the suit within one year from the date of communication of this order to the said court.

Both the parties as well as the courts below shall act on the written communication of the learned advocates for the parties and/or server copies of this order, without insisting upon prior production of a certified copy thereof.

There will be no order as to costs.

Urgent photostat certified copies of this order, if applied for, be made available to the parties upon compliance with the requisite formalities.

(Sabyasachi Bhattacharyya, J.)