

S/L 17
13.04.2021
Court No.19
SB

**CO No. 918 of 2021
(Via Video Conference)**

Tandra Adhikari
Vs.
Sanjida Sultana & Ors.

Mr. Sarwar Jahan

...for the Petitioner.

Ms. Sanjida Sultana,

...for the Opposite Party.

This revisional application arises out of an order dated February 23, 2021 passed by the learned Civil Judge (Senior Division), Sealdah in Title Suit No. 101 of 2019 by which an application filed by the plaintiff under Section 94 of the Code of Civil Procedure was allowed.

It is contended by Mr. Jahan, learned advocate appearing for the petitioner/defendant no. 1 that the application under Section 94(e) of the Code of Civil Procedure was not maintainable for seeking police help for removal of a pad lock, which was allegedly affixed by the defendants in violation of an ad interim order of injunction.

Reliance has been placed on the decision of the Andhra Pradesh High Court in the matter of *Polavarapu Nagamani Vs. Parchuri Koteswara Rao* reported in 2009 o Supreme(AP) 833. Reliance is specially placed on paragraph 23 of the said judgment in support of his contention that the proper remedy of the plaintiff would be

to file an appropriate application under Order 39 Rule 2A of the Code of Civil Procedure alleging violation of the order of ad interim injunction. Paragraph 23 of the said judgment is quoted below:-

“In a second situation, as envisioned above, where a complaint is made that the order of injunction granted by the Court restraining or prohibiting the opposite party from interfering with possession, from changing the nature of land, from demolishing or constructing any structure on disputed land or interfering with the enjoyment of the land like cultivation and/or preventing the commission of positive act in breach of injunction order, the civil Court cannot pass police protection order in exercise of powers under Section 94(e) or 151 of C.P.C. The power of this Court to pass police protection order to prevent the disobedience of injunction order is different from the power of the Court to deal with actual disobedience. In such cases, the remedy of the aggrieved party is to file execution petition under Order XXI Rule 32 read with Order XXXIX Rule 2A of CPC because as per Section 141 of the Code, all provisions of CPC, the procedure in regard to suit is applicable to all interlocutory proceedings and even an order of temporary injunction is executable. The aggrieved party can also file an application under Order XXXIX Rule 2A of CPC alleging contempt of injunction order of Court and seek imprisonment of the violator or attachment of his property. Which course is to be followed by civil Court depends on the nature of

allegations made by the aggrieved in the application made to the Court seeking intervention of the Court. If the procedure is not followed and in every case an application is moved for grant of police protection and the same is granted by the Court, it would render Order XXXIX Rule 2A as well as Order XXI Rule 32 of CPC otious. The civil Court cannot pass any order ignoring the specific provisions of CPC.”

Further reliance has been placed on another decision of the Andhra Pradesh High Court in the matter of *B. Chandra Sekhar Reddy & Others Vs. K. Naga Raju Yadav & Another*, reported in 2013 0 Supreme (AP) 13. The Andhra Pradesh High Court once again reiterated the principles laid down in the above quoted judgment. The respective judgments are not helpful to the petitioner, inasmuch as, this Court as also to the Hon’ble Apex Court has also laid down in many decisions that inherent power under Section 151 could be invoked by the courts to pass mandatory orders requiring a party to undo a wrong done in the **teeth** of an interim order of injunction in emergent situations. In this case, the ad interim order of injunction was passed in favour of the plaintiffs upon a specific finding that the plaintiffs had prima facie been able to prove their possession in the property. The allegation was that subsequently the defendants have put a pad lock assisted by local hooligans. Under this situation an application was filed under Section 94 of the Code of Civil Procedure praying for removal of the pad lock.

This Court finds that such application could be treated as one under Section 151 of the Code of Civil Procedure. The nomenclature or title of the application, cannot be treated to be a deterrent for the Court to otherwise exercise inherent power under Section 151 of the Code of Civil Procedure.

The learned court below has considered the rival contentions of the parties and on meticulous perusal of the ad interim order of injunction came to the conclusion that the police should be directed to remove the pad lock as the defendants' actions were to frustrate the ad interim order passed by the learned court below. When a court passes an ad-interim order it is for the court to see that such order is complied with.

I do not find any reason to interfere with the order impugned. The learned court below has exercised direction in order to render justice in accordance with law. This power is complementary to the power exercised for granting injunction to the plaintiffs.

The revisional application is dismissed.

However, there shall be no order as to costs.

Urgent photostat certified copy of this order, if applied for, be given to the parties on completion of usual formalities.

(Shampa Sarkar, J.)