

15.11.2021
(S/L-10)
Ct.-18
(Susanta)

(Via Video Conference)

C.O. 1139 of 2021

Sahadeb Kundu
-Vs-
Santwana Mullick & Anr.

Mr. Abhijit Ray,
Mr. Goutam Das,
Mr. Subham Gupta,
... For the Petitioner.

Mr. A. P. Bakuli,
.... For the Opposite Parties.

The revisional application under Article 227 of the Constitution of India is at the instance of the plaintiff in a suit for declaration and injunction and is directed against the order dated March 16, 2021 passed by the learned Civil Judge (Senior division), Sealdah, District- 24-Parganas (South) in the said suit being Title Suit no. 182 of 2018.

The petitioner in the said suit filed an application under Section 151 of the Code of Civil Procedure praying restoration of his possession over the suit property alleging that he has been dispossessed from the suit property in violation of the order of injunction passed in an appeal arising out of the said suit.

The question of maintainability of the suit since is under consideration the learned Trial

Judge by the order impugned has dismissed the said application.

Mr. Abhijit Ray, learned advocate appearing on behalf of the petitioner submits that irrespective of maintainability of the said suit, his client is entitled to the restoration of his possession over the suit property since he was dispossessed from the suit property in violation of the order of injunction.

Mr. A.P. Bakuli, learned advocate appearing on behalf of the opposite parties submits that the petitioner was never in possession of the suit property as such, there is no question of his dispossession from there. He further submits that no proceedings alleging violation of the order of injunction has been initiated by the petitioner which signifies that the allegation of the petitioner is fabricated.

Heard learned counsel for the parties, perused the materials-on-record.

In an appeal arising out of the said suit being Misc. Appeal No. 39 of 2019, the appellate Court by the order dated December 13, 2019 directed the parties to the suit to maintain status quo as regards possession over the suit property till the disposal of the suit.

The petitioner is praying relief of restoration of his possession over the suit property alleging

his dispossession in violation of the said order of injunction. To get the said relief, the petitioner is required to prove his possession over the suit property as on the date when the said order of injunction was passed. The maintainability of the suit has got no nexus with the relief sought for in the said application.

It is rightly submitted by Mr. Bakuli that failure of the petitioner to initiate a proceeding under Order XXXIX Rule 2-A of the Code for the alleged violation of the said order of injunction is certainly a relevant consideration in deciding the said application.

The order impugned, for the aforesaid reasons, is not sustainable and is accordingly set aside.

C.O. 1139 of 2021 is disposed of with a request to the learned Trial Judge to decide the said application under Section 151 of the Code afresh, expeditiously in accordance with law without granting any unnecessary adjournment to either of the parties.

There shall be no order as to costs.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties subject to compliance with all requisite formalities.

(Biswajit Basu, J.)