

27
20.07.2021
TN

CO No.1228 of 2021

Sandhya Khatua and others

Vs.

Subal Khatua and others

(Via video conference)

Mr. Arnab Mukherjee,
Ms. Madhurima Mukherjee

.... for the petitioners

Despite service, none appears for the opposite parties.

Affidavit-of-service filed in court today be kept on record.

Learned counsel for the petitioners contends that the trial court acted without jurisdiction in prematurely rejecting the petitioners' application under Section 151 of the Code of Civil Procedure for police help to implement an order of injunction passed by the trial court itself.

It is seen from the impugned order that the premise of the order was primarily that there was insufficient evidence before the court to come to a finding as regards the necessity of police help and/or

violation of the injunction order by the opposite parties.

However, the court below refused to exercise jurisdiction vested in it by law in rejecting the application for police help itself on the premise of such technical finding, instead of granting a liberty to the parties to prove and disprove their respective allegations in respect of the police help application.

Accordingly, CO No. 1228 of 2021 is allowed, thereby setting aside Order No.26 dated February 19, 2021 and directing the trial court to re-hear the application for police help under Section 151 of the Code of Civil Procedure filed in connection with Title Suit No.1312 of 2018, upon giving liberty to both sides to prove and disprove their respective allegations in connection with such police help application by evidence.

In view of the implicit urgency involved, the trial court is requested to dispose of the application for police help afresh as expeditiously as possible, positively within one month from the date of communication of this order to the court below.

The parties as well as the court below shall act on the written communication of the learned advocates for the petitioners, accompanied by a server

copy 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.)