

**In the High Court at Calcutta
Civil Revisional Jurisdiction
Appellate Side**

C.O. No. 1257 of 2021
(Via video conference)

Smt. Krishna Mukherjee
-Vs.-
Prasanta Mondal & Ors.

Mr. Tanmoy Mukherjee,
Mr. Souvik Das
...for the petitioner

Mr. Sudipto Maitra,
Mr. Vijay Verma
...for the opposite parties

The grievance of the petitioner is that the learned trial judge refused the petitioner's application under Section 151 of the Code of Civil Procedure for grant of police help to implement an order of injunction passed by the trial court. By placing reliance on the said order of injunction, dated October 14, 2020, learned counsel for the petitioner contends that the defendants/opposite parties were specifically restrained from damaging the "C" schedule property, that is, the boundary wall, which affects the property of the plaintiff till a particular period. Such interim order, it is submitted, was extended from time to time. In the application for police help, the petitioner

categorically alleged that the opposite parties are trying to violate the order of injunction. Moreover, it is submitted by learned counsel that, due to inadvertence of the petitioner, certain documents were not produced in the court below, such as, a demolition order of the Howrah Municipal Corporation and an order passed by a coordinate Bench of this Court, whereby the writ court had directed the Howrah Municipal Corporation to take necessary consequential steps to the notice of demolition within a limited period.

As such, learned counsel argues that the court below ought to have granted police help sought by the petitioner in order to implement its own order of injunction.

Learned senior counsel appearing for the defendants/opposite parties contends that the said documents, which were not produced in the court below, are irrelevant for the present purpose. It is contended that the legality of the notice under Section 177 of the Howrah Municipal Corporation Act was challenged subsequently by the defendants/opposite parties and an order of stay of operation of the same has been granted by another coordinate Bench.

Learned counsel next contends that the building, alleged to be constructed on the “B” schedule property, has already reached completion. As such, there cannot arise any occasion for demolition of the “C” schedule boundary wall at present.

Hence, it is contended by the opposite parties that the impugned order was passed well within the jurisdiction of the court below and suffers from no flaw.

Upon going through the materials-on-record as well as the impugned order and hearing learned counsel for the parties, it is evident from the impugned order itself that an application filed by the petitioner under Order XXXIX Rule 7 of the Code of Civil Procedure is still pending. Despite allegations and counter-allegations made by the parties, unfortunately, none of the documents relied on by the parties were produced before the court below, due to which the impugned order cannot be faulted in any manner.

Hence, there is no scope for interference with the impugned order.

However, since the primary premise of the impugned order was that sufficient documents had not been produced by the petitioner to

substantiate the petitioner's allegation of violation of the injunction order by the defendants/opposite parties, an opportunity ought to be given to both sides to bring on record the relevant documents and/or other evidences, which they want to rely on respectively to ascertain as to whether there is actually violation of the injunction order by the defendants/opposite parties.

In the light of the above observations, C.O. No. 1257 of 2021 is disposed of without interfering with the impugned order. However, the plaintiff/petitioner is granted liberty to file a fresh application under Section 151 of the Code of Civil Procedure for implementation of the injunction order by police help, if occasion so arises, in the court below.

In the event such an application is made, the trial court shall grant opportunity to both parties to produce adequate materials in support of their respective contentions, documentary or otherwise and, thereafter, proceed to adjudicate the same as expeditiously as possible, upon opportunity of hearing being given to both sides, in accordance with law, without being influenced in any manner whatsoever by any of the

observations made in this order and/or in the order impugned herein.

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 of all necessary formalities.

(Sabyasachi Bhattacharyya, J.)