

03,DL,Ct.18
10.09.2021
AJ.

C.O. 1798 of 2019
I.A. No. C.A.N. 1 (Old C.A.N. 9381 of 2019)
(Through Video Conference)

Dipak Kumar Bose & Anr.
-Vs-
Sheikh Abdul Sabir and Associates & Ors.

Mr. Aniruddha Chatterjee,
Mr. Saptarshi Kumar Mal,
Mr. Debabrata Roy.
....for the petitioners.

Mr. Surajit Nath Mitra,
Ld. Senior Advocate,
Mr. Deepnath Roy Chowdhury,
Mr. Kaunish Chakraborti,
Mr. Kh. Samiul Haque,
Mr. Bhaskar Dwivedi.
.....for the opposite party no.1/
applicants.

In Re: C.O. 1798 of 2019

The instant revisional application under Article 227 of the Constitution of India is at the instance of the defendants in a suit for permanent injunction and is directed against Order no. 87 dated February 14, 2019 passed by the 2nd Court of learned Civil Judge (Junior Division) at Arambagh, District- Hooghly in the said suit being Title Suit No. 70 of 2011.

The plaintiff/ opposite party no. 1 in this suit filed an application for implementation of the order of injunction dated December 12, 2011 by Police assistance passed in an appeal arising out of the suit being Miscellaneous Appeal No. 13 of 2011. The learned Trial Judge by the order impugned has

allowed the said application.

The suit was originally filed against Sri. Gopal Agarwal and Hooghly District Central Co-operative Bank Ltd. Arambag Branch, being opposite party nos. 3 and 2 herein respectively.

The petitioners were subsequently added as defendants in the said suit. The learned Trial Judge by the order dated September 13, 2011 allowed an application filed by the plaintiff/opposite party under Order XXXIX Rules 1 and 2 of the Code of Civil Procedure thereby restraining the said Sri. Gopal Agarwal from dispossessing the plaintiff from the suit property and from entering into it till the disposal of the suit.

The said Sri. Gopal Agarwal aggrieved by the aforesaid order preferred the miscellaneous appeal being Miscellaneous Appeal No. 13 of 2011 before the learned Additional District Judge Arambag, District. Hooghly and by the judgement and order dated December 12, 2011 had disposed of the said appeal by modifying the order of the learned Trial Judge and by directing the parties to maintain status quo in respect of the suit property as it was continuing since filing of the suit, till the disposal of the said suit.

In order to appreciate what was the status quo, the following observations of the appeal court needs to be looked into: –

“The appellant/defendant vests the right of management and liabilities of the said cold storage in writing dated January 27, 2009 to the plaintiff/respondent..... The appellant cannot say that he never vests right of management and liabilities of the cold storage to the hands of the plaintiff/respondent.....The Appellant/defendant cannot say that the plaintiff never took part of the management or he never took the charge of risk of the debt of the cold storage and other liabilities of the property.....

It is admitted fact that the Appellant/Defendant is the owner of the property and also the Chairman of the Cold storage, so being the owner of the property/chairman, the right, title and interest and possession always in the hands of the Appellant. Being owner/chairman of the property, the appellant has right to enter in his property, the entry cannot be unlawful.”

The learned Trial Judge by the order impugned has directed the Inspector-in-Charge of the Arambag Police station to keep close vigil over the suit property and ensure due compliance of the said order dated December 12, 2011 of the learned additional District Judge, Arambagh passed in the said Miscellaneous Appeal No. 13 of 2011.

Mr. Aniruddha Chatterjee learned advocate for the petitioners submits that the petitioners along with others have subsequently filed another suit being Title Suit No. 50 of 2016 for declaration of their right, title and interest over the said cold storage and order of injunction passed in an appeal arising out of the said suit has diluted the effect of the order of injunction sought to be implemented by the Police assistance. He refers different documents annexed with the different affidavits filed in this

proceeding to contend that his clients are in possession and control over the business of the said cold storage.

On the other hand Mr. S.N. Mitra learned senior counsel appearing on behalf of the plaintiff/opposite party no. 1 by referring different document from record submits that the plaintiff is in possession and control of the said cold storage.

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

The order of injunction, implementation of which the plaintiff is seeking, recognises the right of the plaintiff to run the management of the said cold storage, at the same time the said order also recognises the right of the defendant, Sri. Gopal Agarwal to enter into it. In view of the limited scope of the present revisional application that whether the learned Trial Judge was justified in directing implementation of such an order of injunction by Police assistance, investigation as to who is in actual possession of the said cold storage and in control of its business are irrelevant consideration and beyond the scope of the present application.

It is impractical to direct the Police authority to keep close vigil over the day-to-day management of the said cold storage, the nature of the order of injunction is such which cannot be implemented by Police assistance.

The order impugned therefore is not sustainable and is accordingly set aside. However the I.C. Arambag Police Station is directed to see that no breach of peace takes place in and around the said cold storage.

C.O. 1798 of 2019 is allowed with the above terms without any order as to costs.

In view of the aforesaid order, the connected application being C.A.N 1 of 2019 (Old. C.A.N 9381 of 2019) for dismissal of the present revisional application is dismissed accordingly.

(Biswajit Basu, J.)