

S/L 16  
24.09.2021  
Court. No. 07  
*suwayan*

CO 1419 of 2021

Malay Kumar Das  
Vs.  
Dibyajyoti Das  
(Through video conference)

Mr. Biswajit Tiwari

...for the Petitioner

The petitioner is the plaintiff in a suit for recovery of possession. The petitioner has challenged the order being no. 70 dated March 24, 2021 passed by the learned Civil Judge, Senior Division, Chanchal, Malda in Title Suit no. 31 of 2015.

The learned Trial Judge, by the order impugned, directed the possession in respect of the suit shop room to be restored in favour of the defendant/opposite party herein.

Mr. Tiwari, the learned advocate for the petitioner submits that the impugned order was passed without giving any opportunity of hearing to the petitioner. He further submits that an order directing restoration of possession is to be passed after full-fledged trial on evidence.

I have heard the learned advocate for the petitioner and considered the materials on record. It appears from the averments made in the plaint that

the opposite party was inducted as a tenant in respect of the said shop room for a fixed period. Since the opposite party refused to vacate the suit property after expiry of the period of lease, the petitioner filed the instant suit praying for declaration of title and for recovery of possession against the opposite party herein claiming that the defendant is a trespasser in respect of the said shop room.

The opposite party filed an application under Order 39 Rule 7 of the Code for appointment of an Advocate Commission for holding inspection of the suit property alleging that the petitioner herein has forcibly evicted him from the suit property on June 23, 2019.

The Advocate Commissioner after holding inspection submitted his report. The said report was, however, accepted on consent of both the parties.

The opposite party filed an application under Section 151 of the Code of Civil Procedure praying for restoration of possession in respect of his tenanted shop room.

Record reveals that subsequently the petitioner did not take any steps in the suit and also refused to accept the copy of the application under Section 151 of the Code. Since the petitioner failed to take any steps on several occasions, the learned Trial Judge directed

the plaintiff to show cause as to why the suit should not be dismissed for default.

Since the opposite party was out of possession for a considerable period of time and the petitioner did not take any steps in the suit, the learned Trial Judge by an order held that the application under Section 151 of the Code filed by the opposite party should not be kept pending.

The said application was heard by the learned Trial Judge on 22.09.2020 and 12.03.2021. The said orders are not under challenge in this Civil Order.

From the report of the learned Advocate Commissioner it is evident that the petitioner took forcible possession of the suit room.

No objection against such report was filed by the petitioner. In my view no trial on evidence is necessary as illegal dispossession of the opposite party herein from the shop room has been proved in the instant case.

It is also evident from the conduct of the plaintiff/petitioner that he is trying to hold on to the possession of the shop room, which he took illegally. The learned Trial Judge did not dismiss the suit for default on the ground of COVID pandemic. The petitioner cannot take advantage of the pendency of the suit and contend that the application under

Section 151 of Civil Procedure Code could not be taken up prior to hearing of the suit.

In my considered view, the learned Trial Judge was justified in taking up the hearing of the application under Section 151 of the Code ex parte since the plaintiff/petitioner intentionally did not take any steps in the suit with an intent to delay the hearing of the said application.

The learned Trial Judge after taking into consideration the report of the Advocate Commissioner was perfectly justified in allowing the application under Section 151 of the Code of Civil Procedure and directing the possession of the said shop room to be restored in favour of the defendant/ opposite party.

It is well settled that even a trespasser cannot be evicted without due process of law. In the instant case it is proved that the petitioner evicted the opposite party herein from the suit property forcibly during the pendency of the suit and it is the duty of the Court to put him back in possession.

The impugned order, in my view, does not suffer any infirmity, warranting, interference under Article 227 of the Constitution of India.

CO. 1419 of 2021 accordingly stands dismissed.

There will be, however, no order as to costs.

Urgent Photostat certified copy of this order, if applied for, be given to the parties on priority basis.

**(Hiranmay Bhattacharyya, J.)**