

08.09.2021
Item No.2
Ct. No.7
CHC

**C.P.A.N.626 of 2021
(Physical Hearing)**

**Smt. Puspa Sardar & ors.
Vs.
Sri Sunil Kumar Barui & anr.**

Mr. S. Datta,
Mr. Purbangshu Chandra Mitra,
Mrs. Piyali Mitra
...for the petitioners

Special Civil Jurisdiction of this Court has been invoked in this case under Article 215 of the Constitution of India, read with Section 10 of the Contempt of Courts Act, 1971, alleging deliberate and purposeful violation of orders by contemnors/opposite parties against order dated 22nd September, 2021 and order dated 29th November, 2012, passed by learned Civil Judge (Junior Division), 3rd Court at Alipore in Title Suit No.14906 of 2011 of learned Civil Judge (Junior Division), 3rd Court at Alipore.

Petitioners were favoured with an *ex parte* decree declaring their tenancy rights in respect of the suit property mentioned in scheduled to that plaint and also granting permanent injunction.

Subsequently, an application under Order IX Rule 13 C.P.C. was filed by the defendants/opposite parties, which was registered as Misc.Case being No.29030/2012 of learned Civil Judge (Junior Division), 3rd Court at Alipore.

It is contended by the learned advocate for the petitioners that even after being favoured with an *ex parte* decree declaring the tenancy right of the plaintiffs, the opposite parties/defendants/contemnors deliberately demolished the common bath and privy, used by the petitioners, putting petitioners in much distress, and further constructed a boundary wall in the common entrance passage and thereby restraining the petitioners to their free right to ingress and egress to the tenanted premises.

Admittedly, petitioners entered their respective appearance in the Misc.Case for vacating the *ex parte* decree, and the learned court below in connection with the Misc.Case is now collecting the evidence for the proper adjudication of the prayer for vacating the *ex parte* decree.

Referring the provisions of Section 10 of the Contempt of Courts Act, 1971, learned advocate

for the petitioners has tried to impress upon the Court that this Court should interfere against such alleged violations upon resorting to Section 10 of the said Act, so that the grievance raised by the petitioners may be adequately redressed against the contemnors/opposite parties.

The point requires to be addressed is very short and simple, requiring no extensive hearing and the same may even be disposed of without securing presence of the opposite parties/alleged contemnors. Accordingly, service upon the opposite parties/alleged contemnors stands dispensed with.

The contention raised by the petitioners is that despite the petitioners being favoured with *ex parte* decree declaring their tenancy rights, the alleged contemnors/opposite parties have purposefully violated Court's order by demolishing the common bath and privy, used by the petitioners, and also by raising boundary wall intending to make interference with the free ingress and egress of the petitioners to the tenanted premises.

Admittedly, learned court below is in adjudicatory process with collection of evidence for vacating *ex parte* decree on the prayer of the opposite parties/alleged contemnors. When the

learned court below is in seisin of the entire matter, this Court is of the view that special jurisdiction of this Court, available under Section 10 of the Contempt of Courts Act, 1971, should not be resorted to. Enough remedies are available before learned court below, which the petitioners may resort to for duly redressing their grievance, as mentioned hereinabove. Accordingly, the instant application does not call for any interference in exercise of special civil jurisdiction, as available under Section 10 of the Contempt of Courts Act, 1971.

Petitioners are, however, given liberty to approach the learned court below upon resorting to appropriate provisions contained in the Code of Civil Procedure for being adequately remedied in terms of their grievance, which is of course subject to proof in accordance with the law before the learned court below.

If any such application is made by the petitioners before learned court below, that shall be duly addressed to by the learned court below and decide the same in accordance with the provisions of the law, providing sufficient opportunity of hearing to either of the parties to this case.

With this observation/direction, the instant revisional application stands disposed of.

Petitioners are directed to make communication of this order to the opposite parties/alleged contemnors and their learned advocates so that they may come prepared ready on the scheduled date by the learned court below.

Urgent certified photostat copy of this order, if applied for, be given to the parties as expeditiously as possible on compliance of all necessary formalities.

(Subhasis Dasgupta, J.)