

S/L 1
04.01.2021
Court. No. 19
GB

C.O. 1393 of 2020

Amrit Singh
Vs.
Jharna Chowdhury & Ors.

(Through Video Conference)

*Mr. Chayan Gupta,
Mr. Dwip raj Basu.*

...for the Petitioner.

Mr. Bratin Kumar Dey.

...for the Opposite Party Nos.1 & 2.

This revisional application has been filed by defendant no.1 in Title Suit No.731 of 2020. The other two defendants are supporting the case of the petitioner and have been impleaded as proforma defendants. The plaintiffs have been impleaded as opposite party nos.1 and 2.

Mr. Bratin Kumar Dey, learned advocate appears on behalf of the plaintiffs/opposite party nos. 1 and 2. By this revisional application the order dated October 17, 2020 passed by the learned Civil Judge (Junior Division), 4th Court at Alipore has been challenged. By the order impugned, the learned court below allowed an application under Section 151 of the Code of Civil Procedure ex parte, filed by the plaintiffs on October 17, 2020 through a put up petition. The learned court considering the situation allowed the put up petition with a direction that the records should be placed at 12.30 p.m. before the learned court. Admittedly,

there is no order of service and the order dated October 17, 2020 was passed by allowing an application under Section 151 of the Code of Civil Procedure without service upon the defendants. By the order impugned, the defendants were restrained from causing any disturbance and obstruction in the peaceful use and enjoyment of the property and ingress and egress from the main entrance gates, common areas, facilities and also from using the roof as per the impugned deed till November 20, 2020.

The petitioner has challenged this order on the ground that the learned court below having once refused the ad interim injunction prayed for by the plaintiffs when the suit was filed, could not have allowed an application under Section 151 of the Code of Civil Procedure thereby granting the injunction in an ad interim form which was earlier refused. It is further submitted that the said order was passed without service of the application for injunction on the defendants and without even considering that an application under Section 151 of the Code of Civil Procedure was not maintainable when the Civil Procedure Code had prescribed a procedure for passing orders of injunction. It is further submitted that the learned court once having refused to pass an ad interim order of injunction, could not have allowed the application under Section 151 of the Code of Civil Procedure which was in the nature of allowing an ad interim injunction without considering the contentions of the defendants.

I am of the opinion that the ad interim injunction order could not have been passed by the learned court below in exercise of its inherent power under Section 151 of the Code of Civil Procedure when there is a prescribed alternative remedy under Order 39, Rules 1 and 2 of the Code of Civil Procedure. Moreover, the order could not have been passed ex parte without service upon the defendants as the same had been refused and directions were passed for service upon the defendants. The court did not even consider that service upon the defendants were necessary before such an order was passed, especially in view of the order of refusal to grant ad interim order of injunction on the first occasion. The court was conscious of the fact that the ad interim order of injunction was refused but, subsequently on the basis of the application under Section 151 of the Code of Civil Procedure an order of injunction was passed without service of the same upon the defendants.

The order impugned, for the above reasons, cannot be sustained. The order impugned be set aside and quashed. However, the defendants shall not disturb the plaintiffs with regard to use of such common areas in the premises, which are not covered by the deed of the defendants till the disposal of the application for temporary injunction.

With regard to the merits of the claims and counter-claims of the parties as per the respective shares and also the allegation of unauthorised construction, this Court has not made any observation and the learned court below shall

proceed independently and in accordance with law without being influenced by any observations made hereinabove.

The plaintiff is directed to serve a copy of the application for temporary injunction upon the defendants and also upon their learned advocate on record appearing before this Court within January 8, 2021.

The defendants are at liberty to file their written objection within two weeks thereafter and serve a copy of the same upon the plaintiffs and also upon the learned advocate, conducting their case in the learned court below. Thereafter, the said application shall be heard by the learned court and disposed of within one month.

The revisional application is disposed of.

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.

(Shampa Sarkar, J.)