

06.01.2021
Sl. No.12
srm

C.O. No. 1616 of 2020

**Syed Ali Molla
Vs.
Arjina Bibi & Ors.**

Mr. Satyajit Mandal,
Mr. Suranjan Mondal,
Mr. Srikuma Mandal

...for the Petitioner.

This revisional application has been filed by the defendant in Title Suit No.310 of 2015, pending before the learned Civil Judge (Junior Division), 2nd Court at Diamond Harbour, District- 24-Parganas (South). The petitioner is aggrieved by an order dated February 29, 2020 passed by the learned Additional District Judge, Fast Track, 2nd Court at Diamond Harbour in Misc. Appeal No.30 of 2016.

The facts of the case are that the Misc. Appeal No.30 of 2016 was filed against the order dated July 8, 2016 passed by the learned Civil Judge (Junior Division), 2nd Court at Diamond Harbour, District- 24-Parganas (South) allowing an application for mandatory injunction and directing the defendant to open the padlock put in the shop room. The learned lower appellate court rejected the Misc. Appeal on the grounds that the materials on record, documents filed and the

admission in the written objection, to the effect that the petitioner before this Court is being the son of the plaintiff No.2, had admitted that in order to secure the remaining articles of the shop room he had put the same under lock and key. The learned lower appellate court came to the finding that the ingredients for allowing an order of mandatory injunction were present in the instant case and the learned trial court had allowed the application correctly and restored the shop room to its original state of affairs. The learned lower appellate court appears to have considered that the electric connection was in the name of the plaintiff. All other receipts showing payment of essential bills, etc. were also in the name of the plaintiff which were filed in the court and such documents, satisfied the court that the lock should be opened so that the plaintiffs could continue the business from the shop room.

During the pendency of the appeal, the original plaintiff No.1 expired and her heirs and legal representatives have been substituted.

When the learned Courts below have exercised their discretion on the basis of the materials on record, report of local inspection, records of the proceeding under Section 144 of the Cr.P.C. and on the basis of an admission by the petitioner in the written objection filed to the application for

mandatory injunction that he had put the lock in the shop room to secure the articles, this Court shall not interfere with the orders impugned. The learned lower appellate court has not passed any erroneous order in view of the consideration of the facts of the case along with the subjective satisfaction recorded in the order. The documents, facts situation and also admission of the petitioner have satisfied the courts that in such an extreme situation an order of mandatory injunction was permissible.

Reliance was placed on the decision of Bhutoria Brothers vs. Banwarilal reported in (1982)1 CLJ 2008, wherein this Court was pleased to observe that in appropriate cases an order of mandatory injunction could be passed to restore the state of affairs.

In the decision of Indian Cable Co. vs. Sumitra reported in AIR 1985 (Cal) 238, it was observed that in exceptional cases a mandatory injunction to grant a relief asked for could be passed.

Under such circumstances, this Court not see any reason to interfere with the order passed by the learned lower appellate court and the revisional application is, therefore, dismissed.

The learned Trial Judge is directed to dispose of the Title Suit No.310 of 2015 along with all the pending applications as early as possible preferably within a period of one year from the date of communication of this order.

This revisional application is, thus, 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.)