

04.01.2021
Sl. No.22
srm

C.O. No. 1620 of 2020

Sri Monomohan Dutta
Vs.
Bhutnath Dutta & Anr.

Mr. Partha Pratim Ray,
Mr. Sarbananda Sanyal

...for the Petitioner.

Mr. Aniruddha Chatterjee,
Mr. Surya Prasad Chattopadhyay,
Mr. Arjun Samanta

...for the Opposite Party No.1.

This revisional application is directed against the order dated December 11, 2020 passed by the learned Civil Judge (Senior Division), 2nd Court at Krishnanagar, Nadia in Title Suit No.14 of 2020. By the order impugned, the learned Court below allowed the application for police help filed under Section 151 of the Code of Civil Procedure. The learned Court below directed the Officer-in-Charge, Kaliganj Police Station to see that the order of injunction issued by the Court and the undertaking given by the defendant before the Hon'ble Chief Justice was implemented in its true spirit and to report to the learned Court below within two weeks from the communication of the order about the present status prevailing in the suit property especially as to whether there was any violation by way of an ongoing construction.

Mr. P.P. Ray, learned Advocate for the petitioner, submits that the learned Court below was influenced by the order passed by this Court in another civil revisional application filed by the plaintiff/opposite party No.1. He contended that there was no violation of the order of the Court and the undertaking given by the defendant before this Court with regard to the compliance of the order of temporary injunction was respected. Mr. Ray submitted that the application for police help, which was allowed by the learned Court below, did not record the satisfaction of the learned Court with regard to the immediate grave urgency requiring an order under Section 151 of the Code of Civil Procedure when the provisions of Section 36 and Order XXXIX Rule 2A of the Code of Civil Procedure provide adequate remedy to the opposite party No.1. He submitted that inherent power of the Court could not be invoked as the CPC was a complete code providing alternative mechanism for implementation of orders of injunction. Hence, the order impugned should be set aside for being an unreasoned one, contrary to law and a mechanical expression of the findings of the Hon'ble High Court in the previous civil revisional application.

Mr. Aniruddha Chatterjee, learned Advocate appearing on behalf of the plaintiff/opposite party No.1, submits that

despite there being an undertaking given by the petitioner before this Court there was continuous violation of the order of injunction. According to Mr. Chatterjee, there are judgements galore on the point that when there are serious violations of injunction orders, the Court by invoking its inherent power under Section 151 of the Code of Civil Procedure could pass such orders for implementation of the order of injunction by the police.

I have gone through the provisions of the law and I have considered the judgements relied upon by the learned Advocates for the respective parties. I agree that the order impugned does not record the satisfaction of the Court with regard to the grave urgency as to why the inherent power of the Court should not be invoked under Section 151 of the Code of Civil Procedure for granting police help and directing the police to ensure implementation of the order of injunction. The Court refers to the conduct of the plaintiff who has been running pillar to post in order to secure an order of implementation of the order of injunction, however, the categorical satisfaction of the Court below ought to have been recorded in the order. Moreover, although there seems to be a report filed by an Advocate-Commissioner showing alleged violation but the said report has not at all been considered by

the learned Court below. Report of the learned Advocate-Commissioner is taken on record. The learned Court also failed to record how the undertaking given before this court was violated.

Under such circumstances, the order impugned is set aside and quashed. However, parties are directed to maintain *status quo* with regard to the nature, character and possession of the suit property.

It is made clear that in terms of the undertaking given by Mr. Ray before this Court on an earlier occasion and also today, no construction will be done in violation of the order of temporary injunction. The police is also directed to maintain vigil but not to harass the defendant/petitioner in anyway. The learned Court below shall hear the application under Section 151 of the Code of Civil Procedure afresh within two weeks from the date of communication of this Court.

All parties including the learned Court below are directed to act on the basis of the server copy 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.)