

22.09.2021
Sl. No.5
akd

***Calcutta High Court
In the Circuit Bench at Jalpaiguri
Appellate Jurisdiction***

**C.O. 75 of 2021 [via video conference]
CAN 1 of 2021**

[Bishnu Kumar Minda -Vs- Smt. Sarda Devi Minda & Ors.]

Mr. Kushal Chatterjee
Mr. Avrojoyti Das
Mr. Shrikant Ghosh
... .. for the petitioner

Mr. Aayush Mitruka
... .. for the opposite parties

The revisionist/defendant is aggrieved by an order dated 4th August, 2021 passed by the learned Civil Judge (Junior Division), Siliguri. By the said order the application filed by the defendant to clean and clear out accumulated water from a common passage has been declined by the court below. The subject matter of the suit is, inter alia, Schedule 'C' to the plaint which is admittedly the common passage between the plaintiffs and defendant.

There are allegations and counter allegations in the suit. The Court below has found that given the long standing acrimony between the parties, it may not be wise to permit the defendant to clean the water that has accumulated in the common passage. The Court below has decided to expedite hearing of the suit.

This court finds that the order of the learned Judge in the court below is otherwise reasonable and fair. However, given the recent pandemic and the prevalence

of mosquito borne diseases in North Bengal, it would be in the interest of both the parties to ensure that the drain water and other accumulated water in the common passage is cleaned out. The entire costs of cleaning up of the passage shall be borne by the petitioner without any chance of refund. The cleaning out shall be carried out in the presence of the plaintiffs/opposite parties and/or their representatives.

The defendant shall ensure that there is absolutely no construction/demolition of any nature whatsoever in the process of draining out of the water. The water shall be drained out manually or by using a water pump or apparatus.

It is also made clear that draining out of water shall not create any right whatsoever in respect of the property in favour of either of the parties.

Since the suit itself is being taken up for hearing, it is ordered that the suit be disposed of expeditiously as decided by the court below.

It is submitted by the counsel for the defendant that the parties are taking time repeatedly. It is, therefore, ordered that the suit shall be heard on a day to day basis by the court below. The hearing of the suit shall be concluded and judgement delivered mandatorily and positively within a period of 45 days from the date of receipt of a copy of this order.

With the aforesaid observations, the petition is disposed of.

In view of disposal of the revisional application, the connected application being CAN 1 of 2021 also stands disposed of.

The petitioner shall serve a copy of the revisional application upon the learned counsel for the plaintiffs/opposite parties.

There shall be no order as to costs.

All parties are to act on a server copy of this order duly downloaded from the official website of this court.

(Rajasekhar Mantha, J.)