

Ct. 04.8
No. 2022
14

Item
No.823

IN THE HIGH COURT AT CALCUTTA

CIVIL REVISIONAL JURISDICTION

C.O. 94 of 2021

Tapas Purkait & Ors.

-Versus-

Panchanan Kayal & Ors.

With

CAN 1 of 2022

Mr. Shiv Shankar Banerjee

Ms. Sanchita Barman Roy ...For the Petitioners

Mr. Sukanta Chakraborty

Mr. Anindya Halder ...For the Opposite Parties No.1 to 5

This revisional application under Section 24 of the Code of Civil Procedure has been filed by the petitioners seeking transfer of a Title Suit from the Court of the learned Civil Judge (Junior Division), 1st Additional Court at Diamond Harbour, South 24 Parganas to City Civil Court at Calcutta or to any other Court.

Shorn of details, the background facts which led the filing of the revisional application may be stated as under:

The petitioners Tapas Purkait and three others have been arrayed as the defendants in Title Suit No. 214 of 2021 filed by the respondents. The suit is pending in the Court of the learned Civil Judge (Junior Division), 1st Additional Court at Diamond Harbour.

The respondents/plaintiffs moved an application for temporary injunction under Order 39 Rules 1 and 2 of the Code of Civil Procedure and moved an another application for local inspection under Order 39 Rule 7 of the Code of Civil Procedure before the learned Court below on 12th August, 2021. On the application for temporary injunction

the learned Trial Judge by an interim order directed that status quo in respect of the nature and character of the suit property be maintained. On the application for local inspection the learned Judge appointed Ms. Madhuri Bar, learned Advocate as Commissioner for holding local inspection over the suit property. On 17th August, 2021 the learned Advocate Commissioner returned the writ of commission to the learned Court below with a sordid report that commission work could not be executed by her due to intense threat given out to her by the petitioners/defendants. On the same date i.e. 17th August, 2021 the respondents filed an application under Section 151 of the Code of Civil Procedure seeking police help to implement the local inspection commission.

On 23rd August, 2021 the case record of the aforesaid Title Suit was put up before the learned Court below at the instance of both the parties. On 23rd August, 2021 the petitioners filed an application praying for vacating the interim order and sought for time to file written statement. On 25th August, 2021 the prayer of the respondents was allowed and local inspection Commissioner was given liberty to take the writ of commission and submit her reply. Ultimately, the learned Commissioner completed the inspection work and filed the report in the Court on 27th September, 2021. It may be noted that one compliance report was filed by the Sub-Inspector of Magrahat PS and the report was kept on record.

The petitioners complain that they could not take steps in the suit on 29th September, 2021, 22nd November, 2021, 13th December, 2021 and 20th December, 2021.

In fact, the petitioners had to transfer the brief of the case from one advocate to another advocate since the learned Advocates after receiving the brief returned the brief to the petitioners citing personal difficulties. The petitioners further complain that on the allegations that the petitioners caused hindrance to the commission's work conducted by a learned lady Advocate, the members of Diamond Harbour Civil Court Bar Association are not accepting their briefs. The petitioners submit that they approached most of the learned Advocates of the Bar, but all of them refused to accept the brief of them.

Unless and until the petitioners get a chance to represent themselves before the learned Court to defend their case they would not be in a position to have access to the justice delivery system. Hence, the prayer.

Learned Counsel for the respondent Nos. 1 to 5/plaintiffs submits that though his clients have not filed any affidavit-in-opposition, it be deemed that the respondent Nos. 1 to 5 deny all the allegations as made in the revisional application.

Learned Counsel appearing for the petitioners by drawing attention of the Court to the order-sheets annexed to the revisional application submits that the orders passed by the learned Court below from time to time will demonstrate that his clients could not present their defence properly before the Court owing to refusal to accept brief by members of the Diamond Harbour Civil Court Bar Association. Learned Counsel strenuously submits that in order to render justice to his clients and to allow them to access to justice,

the suit should be withdrawn and transferred either to City Civil Court, Calcutta or to any of the Courts as this Court deems it just.

Per Contra, learned Counsel appearing for the respondent Nos. 1 to 5 submits that the orders passed by the learned Court below from time to time and the photocopies of the vakalatnamas filed by him in Court today will reveal that the petitioners were not denied the assistance of a learned lawyer from Diamond Harbour Civil Court Bar Association. According to learned Counsel, the revisional application brought by the petitioners is liable to be dismissed.

Perusal of the order-sheets annexed to the application shows that the respondents/plaintiffs made two applications- one for temporary injunction and the another for local inspection on 12.08.2021. On the application for temporary injunction, the learned Court below directed the parties to the suit to maintain status quo in respect of the nature and character of the suit property till the next date. On the application for local inspection the learned Court appointed Ms. Madhuri Bar, a learned Advocate as local inspection Commissioner over the suit property. The order dated 17th August, 2021 shows that the learned Advocate Commissioner returned the writ of commission with field notes stating therein that because of threat given out to her by the petitioners she could not complete the commission work. By order dated 17th August, 2021 the learned Court below directed the Officer-in-Charge of Magrahat PS to provide police help to the learned Commissioner so that she

could execute the commission work without any hindrance from any quarter. As the order dated 23.08.2021 indicates, the petitioners/defendants entered appearance before the learned Court below by filing vakalatnama on 23.08.2021 and they made an application praying for vacating the interim order of injunction passed by the learned Court on 12.08.2021. By order dated 25.08.2021 the learned Court below asked the learned inspection Commissioner to get back the writ and execute the commission work. The learned Commissioner submitted the inspection report on 20.09.2021. It is complained by the petitioners that on the reason that the learned Advocate Commissioner got resistance from them at the time of the execution of the commission work, learned Advocates who were appointed by them returned the brief to them on personal difficulties. As stated above, they state that they could not take steps in the suit on 29th September, 2021, 22nd November, 2021, 13th December, 2021 and 20th December, 2021 due to handing over the brief to them by the concerned learned Advocates appointed by them.

It appears from a photocopy of a vakalatnama that the petitioners appointed Mr. Swapan Kumar Chakraborty, learned Advocate of Diamond Harbour Civil Court Bar Association on 23.08.2021 to defend them in the suit. The order-sheet shows that on 23.08.2021 Mr. Chakraborty took appropriate steps on behalf of the defendants before the learned Court below. Again on 25.08.2021 he also appeared for them before the learned Court below. Thereafter, on 29.09.2021 learned Advocate for the petitioners took steps on behalf of his clients and sought for time to file written statement.

On 22.11.2021 when the suit was posted for hearing the petitioners were represented and they sought for time through their learned Advocate to file written statement and written objection. Thereafter, as the order dated 20.12.2021 indicates, the petitioners changed their learned Advocate. As it is evident from an another photocopy of a vakalatnama, Mr. Sankar Mondal, learned Advocate of Diamond Harbour Civil Court Bar Association accepted the vakalatnama executed by the petitioners on 20.12.2021. The order-sheets as annexed to the application do not show whether Mr. Sankar Mondal, learned Advocate returned the brief to the petitioners or not.

As the facts as above demonstrate, the submission as advanced by the learned Counsel appearing for the petitioners that the defence of the petitioners is not being properly presented before the learned Court below due to returning brief by the learned Advocates of Diamond Harbour Civil Court Bar Association is not acceptable.

Therefore, the revisional application does not merit success. Accordingly, the revisional application is dismissed.

Be that as it may, this Court expects that the learned Advocate or learned Advocates of Diamond Harbour Civil Court Bar Association whom the petitioners have engaged to represent them before the learned Court below shall render all sort of assistance to them so that they are not denied of access to justice.

With the aforesaid direction and observation the revisional application and connected application, if any, stand disposed of. No order as to costs

Let a copy of this order be communicated to the learned Court below as well as to the Secretary, Diamond Harbour Civil Court Bar Association immediately for their information.

Urgent certified website copies of this order, if applied for, be given to the parties upon compliance with all requisite formalities.

(Rabindranath Samanta,J.)

