

24.08.2022
Item No.10
Ct. No.7
CHC
(disposed of)

C.O.1183 of 2022

**Nazir Ali @ Molla Nazir Ali & anr.
Vs.
Tousif Ahmed**

Mr. Anirban Das
...for the petitioners

Mr. Shubham Gupta,
Mr. Nadeem Khan
...for the opposite party

Affidavit-of-service furnished by the petitioners be taken on record.

Petitioners assail the order no.10, dated 29th March, 2022, passed by learned Civil Judge (Junior Division), 1st Court, Barasat, North 24 Parganas, in Title Suit No.550 of 2021, allowing an application under Section 151 C.P.C. thereby directing the defendants to remove wooden Ghumti, allegedly caused blocking to the ingress and egress of plaintiff's property.

Learned advocate Mr. Das, led by learned Advocate Mr. Partha Praratim Roy appearing for the petitioners at the very onset submits that defendants remained unnoticed, while holding local inspection commission, and in spite of that the court below has placed reliance on the local inspection Commissioner's report.

While allowing the petition under Section 151 C.P.C., it is contended further by the petitioners that no opportunity of hearing was given to the petitioners, while order was passed granting removal of the wooden Ghumti by the defendants.

Per contra, Mr. Shubham Gupta, learned advocate appearing for the opposite party submits that notice of commission was issued upon the defendants and for the reasons best known to the defendants they avoided the commission work.

But the learned advocate for the opposite party is candid enough to submit that when the order was passed directing removal of the Ghumti by the defendants, there was nobody to represent the defendants in the hearing process.

Without going into the details, there is nothing evident from the order impugned that an opportunity of hearing was extended to the petitioners/defendants, and as a result thereof the defendants had the occasion to participate in the hearing process.

For the reasons disclosed hereinabove, the revisional application is disposed of upon setting aside the order dated 29th March, 2022, passed in Title Suit No.550 of 2021 of learned Civil Judge (Junior Division), 1st Court, Barasat, with a direction upon the court below to hear out the same afresh, giving an opportunity of hearing to both the parties, preferably

within a period of four weeks from the date of communication of this order.

With this observation/direction, the revisional application stands disposed of.

Petitioners are directed to make communication of this order to the learned court below as well as to the opposite party and his learned advocate in the court below.

Urgent certified photostat copy of this order, if applied for, be given to the parties as expeditiously as possible on compliance of all necessary formalities.

(Subhasis Dasgupta, J.)