

27.06.2022
Item No.20
Ct. No.7
CHC
(disposed of)

C.O.1453 of 2022

**Sri Amitava Roy & ors.
Vs.
Debnath Basak**

Mr. Sourav Sen,
Mr. Partha Chakraborty
...for the petitioners

Mr. Shyamal Chakrabarty,
Mr. Shubham Gupta,
Mr. Tanmoy Kumar Dey
...for opposite party

The subject-matter of challenge in this revisional application is against the order dated 31st May, 2022, passed by learned Judge, IInd Bench, City Civil Court, at Calcutta, in Title Suit No.368 of 2021, granting restoration of possession to opposite party/tenant in a suit for declaration of tenancy right.

Mr. Sen, learned advocate appearing for the petitioners/defendants submits that when an injunction application is pending under Order 39 Rule 1 and 2 C.P.C., the court below ought not to have passed order directing restoration of possession with a fine of Rs.50,000/- (Fifty Thousand) against petitioners/defendants.

It is contended by the petitioners that ad interim order of injunction has been obtained without providing an opportunity of hearing to petitioners/defendants. In the meantime, petitioners/defendants have filed objection against the prayer for ad interim order of injunction, but upto now such injunction application under Order 39 Rule 1 and 2 C.P.C. has not been finally disposed of.

Mr. Sen, further submits that it is immediately on the day before holding local inspection commission in respect of the suit property, the opposite party/plaintiff claimed to have dispossessed relying upon some documents, purposefully created, and upon consideration of which, the court below has erroneously granted order directing restoration of possession, being oblivious of the pending injunction application under Order 39 Rule 1 and 2 C.P.C. The penalty granted to the tune of Rs.50,000/- against petitioners, according to Mr. Sen, has been assessed without any basis and without consideration of any parameters, relying upon the settled proposition of law.

Per contra, Mr. Chakrabarty, learned advocate appearing for the opposite party/plaintiff at the very threshold of the case, disputes with the submission of Mr. Sen alleging that the impugned order is appealable one, and the present revisional application is not maintainable.

To establish the stand, learned advocate for the opposite party makes reference to the prayer portion of petition, filed by the opposite party/plaintiff under Section 151 C.P.C. wherein prayer for order of mandatory injunction for restoration of possession of tenant was made, who was dispossessed in violation of the ad interim order of injunction.

It is thus contended by learned advocate for the opposite party/plaintiff that when adequate remedy is available by preferring an appeal, this Court should desist from interfering with the impugned order.

Having considered the submission of both sides, it appears that opposite party, seeking declaration of his tenancy right, has been favoured with restoration of his possession by the order impugned with a fine of Rs.50,000/- (Fifty Thousand), to be paid by petitioners to opposite party.

Significantly, application for temporary injunction has not been heard out finally in context with the written objection filed by the petitioners by the trial court.

The settled proposition of law is that a tenant should not be illegally evicted without adhering to due process of law. When learned advocate for the opposite party/plaintiff candidly submits that by the order impugned, the opposite party has recovered his possession, and now he has been possessing the

tenanted premises, pending decision of the suit by the court below, there is hardly any scope to revisit the same.

Mr. Sen learned advocate appearing for the petitioners submits in reply that the entire challenge of this application is against the disposal of an application under Section 151 C.P.C., filed by the opposite party/plaintiff alleging to have been dispossessed, during the pendency of injunction application.

Injunction application, which could not be heard out finally, if disposed of expeditiously, that would sort out the points now raised by the parties.

During the hearing of injunction application, the petitioners may take up such points, as regards the alleged possession of opposite party/plaintiff, and all such points may be addressed to by the court below in accordance with the settled principle of law dealing with grant of injunction.

Since a fine of Rs.50,000/- has been directed to be paid by the petitioners to opposite party/plaintiff without any justification in terms of the settled proposition of law, that part of the impugned order granting penalty to the tune of Rs.50,000/- (Fifty Thousand) is modified.

The petitioners need not to deposit Rs.50,000/- (Fifty Thousand) in the court below, if not already deposited.

The impugned order is modified to the extent, made above. As it is strongly submitted by the opposite party that even after restoration of possession to opposite party, the petitioners have been still interfering with the possession of the opposite party, such point may be raised before the court below, if necessary upon resorting to appropriate application therefor for due redress.

It is, however, clarified that the pending injunction application either may be heard out expeditiously on the date scheduled by the court below, or if for any reasons whatsoever, the same could not be done, the same may be disposed of within three (03) weeks thereafter, providing sufficient opportunity of hearing to either of the parties to this case, but without granting any unnecessary adjournment, unless it is extremely unavoidable.

The pending injunction application is thus required to be disposed of by the court below independently in terms of the materials presented and controverted by either of the parties to this case, without being influenced by the observation made in the body of this order.

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

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.)