

01.03.2022
(S/L-15)
Ct.-18
(Susanta)

(Via Video Conference)

C.O. 1795 of 2021

Ruby Rani Das
-Vs-
Sri Krishnendu Das & Anr.

Mr. Satyam Mukherjee,
Ms. Sayani Ahmed,
Mr. Soumyadeep Mukherjee,
.... For the Petitioner.
Mr. Sounak Bhattacharya,
Mr. Sounak Mondal,
.... For the Opposite Parties.

The matter has been brought to the list at the instance of the petitioner for extension of interim order.

However, by the consent of the parties, the revisional application is taken up for final disposal.

The instant revisional application under Article 227 of the Constitution of India is at the instance of the defendant no. 1 in a suit for declaration of title and permanent injunction and is directed against the order dated September 14, 2021 passed by the 2nd Court of learned Civil Judge(Junior Division) at Barrackpore, District 24-Parganas (North) in the said suit being Title Suit No. 186 of 2019.

The plaintiffs in the suit filed an application under Section 151 of the Code of Civil Procedure for restoration of their possession over the suit schedule 'B' property on the allegation that they have been dispossessed from the said property in violation of the subsisting order of injunction passed in the suit.

The learned Trial Judge by the order impugned has allowed the said application thereby directed the petitioner to restore possession of the plaintiffs over the suit schedule 'B' property.

Learned advocate for the petitioner submits that the defendant no. 1 is in possession of the suit properties and has categorically stated so in the written statement but the learned Trial Judge, without considering the said claim of the defendant no. 1, has directed the petitioner to restore possession of the plaintiffs over the suit schedule 'B' property.

The said learned advocate however admits that the petitioner did not file any written objection to the said application. He prays that the petitioner may be given a further chance to contest the said application upon filing written objection to it and by bringing relevant materials on record in support of his said claim.

The order of restoration of possession on the allegation that the dispossession was made in violation of a subsisting order of injunction has far-reaching effects, as such, before allowing such prayer, a detailed enquiry as to who amongst the parties to the suit was in possession of the property in question on the date of the order of injunction is required to be conducted and to facilitate such enquiry, the petitioner should be given an opportunity to file written objection to the said application.

In view of the aforesaid, the order impugned is set aside. The learned Trial Judge is requested to decide the said application afresh in accordance with law as expeditiously as possible, preferably within a period of one available effective working month of the said Court from the date of communication of this order, and in doing so, shall not grant any unnecessary adjournment to either of the parties.

The defendant no. 1 is permitted to file written objection to the said application within a week from date.

It is made clear that this Court has not gone into the merit of the said application; it is for the learned Trial Judge to decide the same.

C.O. 1795 of 2021 is allowed with the above terms without any order as to costs.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties subject to compliance with all requisite formalities.

(Biswajit Basu, J.)