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C.O. 2514 of 2022

**Kanika Dutta & Anr
Vs
Brojo Durlab Dhar & Ors.**

With

C.O. 2515 of 2022

**Kanika Dutta & Anr
Vs
Brojo Durlab Dhar & Ors.**

Mr. Sanjoy Bose,
Mr. Priyankar Basu Mallick, ... For the petitioners.

Mr. Arnab Roy,
... For the opposite parties.

Affidavit-of-service filed by the petitioners be
kept with the records.

On the prayer of both the parties, revisional
applications, referred hereinabove, are taken up
together for a common law point being involved.

By order impugned dated 2nd August, 2022,
the Court below rejected the prayer for restoration of
water supply to the tenanted premises. By another
order, dated 10th August, 2022, the Court below
kept the petition for restoration of electricity supply
to the tenanted premises pending for hearing.

Mr. Sanjoy Bose, learned advocate appearing
for the petitioners/plaintiffs submits that by order,
dated 26th July, 2022 passed in C.O. 1968 of 2022,
the Court below was directed to hear out the

application under Section 151 CPC filed by the petitioners for restoration of water supply to the tenanted premises within seven days.

Mr. Bose further submits that by the order impugned, dated 2nd August, 2022, the Court below rejected the petition under section 151 CPC for want of production of any cogent document to show that the water connection was allotted to the premises under possession of the petitioners, and for absence of any convincing materials that there has been disconnection effected regarding supply of water to that effect.

The rejection according to Mr. Bose, is basically for the non-production of the documents, and giving precedence to the technicalities, for the petition under Section 151 of the CPC having contained numerous prayers. The rejection of a prayer under Section 151 CPC for restoration of water supply has rendered the stay of the petitioners miserable, and the life of the petitioners is at stake.

Mr. Bose further contends that disconnection of water supply is due to desired movement of the stopcock, effected by the opposite parties to such a direction, the resultant effect of which would be to stop supply of water in the premises under occupation of petitioners.

Such conduct of the opposite parties,

according to Mr. Bose, is condemnable and the petitioners have been forced to be evicted.

As regards stoppage of electricity connection to the tenanted premises, allegedly under occupation of petitioners, Mr. Bose contends that such an urgent application, filed on 10th August, 2022 under Section 151 CPC could have been addressed forthwith before the court below giving a short date for the purpose. The Court below, however, declined to appreciate the miserable condition of the petitioners arising out of the absence of electricity supply, caused at the instant of the opposite parties, Mr. Bose argues.

Per contra, Mr. Arnab Ray, learned advocate appearing for the opposite parties submits that presently the petitioners are not in occupation of the premises and they reside elsewhere leaving the premises under lock and key. Denying the alleged action, leveled against the opposite parties, Mr. Roy submits that, when the petitioners are not in occupation of the premises, there is no need of having water supply to their premises.

Mr. Roy, however, strenuously refutes the contention raised by Mr. Bose that the stopcock to the water supply pipeline has been moved to such a directing resulting in stoppage of water supply to the premises under possession of the petitioners.

It is thus contended by Mr. Roy that the petitioners are obliged to show that they enjoyed the water connection in the premises since inception, and it was stopped deliberately by the opposite parties. Unless that aspect is not proved, no question arises for restoration of water supply to the premises under possession of the petitioners.

Regarding stoppage of electricity connection, Mr. Roy contends that the application for restoration of electricity supply has been made upon filing a put up petition. Such application has not yet been adjudicated by the Court below upon returning a decision therefor. Unless there is rejection of the prayer, the instant revisional application pertaining to restoration of electricity supply is premature.

Upon perusal of the impugned orders involved in both the revisional applications, it appears that the prayer for restoration of water supply has been rejected fundamentally giving precedence to the technicalities coupled with non-production of relevant documents, and absence of convincing materials.

Without truly advertent to the facts, that the petitioners seeking restoration of water supply are in actual occupation of the premises or not, needing supply of water to sustain their lives. More so, when there is a specific contention raised that the

stopcock has been moved to such a direction resulting in stoppage of water supply to the premises, such aspect also should have been gone into by ordering a local inspection for the purpose. That exercise has not been taken by the Court below, while making rejection of a prayer for restoration of water supply.

The settled proposition of law is very clear that the electricity is a basic amenity, of which a person cannot be deprived. Electricity cannot be declined to a tenant on the ground of failure or refusal of the landlord to issue a no objection certificate.

It is not the case of the petitioners that they have already applied for electricity connection, and for which no objection certificate has been denied by the opposite parties.

The petition seeking restoration of electricity supply has not been addressed by the Court below as yet.

The situation as it reveals is founded on the actual occupation of the petitioners in respect of the suit premises, if any, and that actual occupation needs to be ascertained first, so as to address the prayer for restoration of water supply as well as restoration of electricity connection to their premises. There is no further need to make any elaboration on such issue.

Both the revisional applications are disposed of upon setting aside the order, dated 2nd August, 2022 with a direction upon the Court below to hear out the same afresh, taking support of an inspection commissioner's report within a fortnight after reopening of Puja vacation of the Court below.

Petitioners are given liberty to apply for local inspection within three days after reopening of Puja vacation of the Court below, and if any local inspection is applied before the Court below, upon supplying a copy well in advance to the opposite parties, the same shall be addressed and disposed of in accordance with law, so that the report of the commissioner may be submitted at least two days before the date fixed for addressing the issue involved in petition under Section 151 C.P.C., while extending hearing afresh, as per observation of this Court, made hereinabove.

Both the parties are directed to extend their best cooperation to the learned commissioner, while holding commission work.

Regarding petition seeking restoration of electricity supply, such petition filed under Section 151 CPC on 10th August, 2022 be addressed to by the Court below within five working days, after reopening of Puja vacation of the Court below, preferably on the day of filing the application for local

inspection, to be made by the petitioners under Order 39 Rule 7 C.P.C., upon appreciating the urgency of the circumstances, disclosed in the petition itself.

The written objection against the prayer for restoration of electricity connection, if not already submitted, may be submitted within three days after reopening of Puja vacation of the Court below upon supplying a copy well in advance to the petitioners.

With this observation and direction, the revisional applications stand disposed of.

Urgent photostat certified copy of the order, if applied for, be given to the parties on usual undertakings.

(Subhasis Dasgupta, J)