

24.02.2022
Item No.18
Court No.18
AJ.

C.O. 3047 of 2019
(Through Video Conference)

Swarup Adhikari & Ors.

-Vs-

Smt. Archana Pathak

Mr. Tanmay Mukherjee,
Ms. Shila Sarkar,
Mr. Souvik Das,
Mr. K.R. Ahmed,
Mr. Rudranil Das.

... for the petitioners.

Mr. R.K. Bhattacharya.

... for the opposite party.

Affidavit-of-service filed by Mr. Mukherjee,
learned advocate for the petitioners be kept with
the record.

The instant revisional application under
Article 227 of the Constitution of India is at the
instance of the plaintiffs in a suit for ejectment
under the Transfer of Property Act, 1882 and is
directed against Order No. 118 dated August 14,
2019 passed by the 3rd Court of the learned Civil
Judge (Junior Division), Purba Bardhaman in the
said suit being Title Suit No. 13 of 2005.

The defendant/opposite party in the said
suit applied for an order of mandatory injunction
for removal of mud allegedly stacked in front of
the suit shop room.

The learned Trial Judge by the Order No.
23 dated October 27, 2006 directed the
plaintiffs/petitioners to remove the said mud.

Aggrieved by the said order, the petitioners preferred an appeal. The said appeal was disposed of vide order dated November 22, 2007 modifying the order of the learned Trial Judge to the extent that instead of petitioners, the opposite party was permitted to remove the said mud at her own expenses.

The opposite party long time thereafter on December 02, 2016 filed an application under Section 151 of the Code of Civil Procedure for implementation of the said order by police assistance.

The petitioners filed an application questioning the maintainability of the said application on the ground that the application is aimed to delay the disposal of the suit.

The learned Trial Judge by the order impugned has dismissed the application filed by the petitioners.

Mr. Mukherjee, learned advocate for the petitioners submits that that the appeal Court allowed the opposite party to remove the mud stacked in front of the suit shop room way back in the year 2007 but the opposite party, after almost nine years, has filed the application for implementation of the said order by police help on a false allegation that the petitioners are obstructing removal of the said mud.

He further submits that the application is a ploy to delay the disposal of the suit which is at the peremptory hearing stage.

I find substance in the said submission of Mr. Mukherjee.

The opposite party was permitted by the Appeal Court to remove the said mud way back on November 22, 2007 but she did not feel it necessary within nine years from the date of the said order to approach the learned Trial Judge complaining obstruction by the petitioners in removing it.

Be that as it may, pendency of an application of such nature for such long period is not appreciated.

The learned Trial Judge is requested to dispose of the said application expeditiously in accordance with law, preferably within a period of two available effective working months of the said Court from the date of communication of this order and in doing so shall not grant any prayer of the parties for unnecessary adjournment.

The pendency of the said application cannot arrest the further proceeding of the suit, such as recording of evidence of the parties but the said application is required to be disposed of before disposal of the suit.

The suit is pending since 2005. The learned Trial Judge is requested to make all endeavour to dispose of the said suit as expeditiously as possible without granting any unnecessary adjournment to either of the parties.

C.O. 3047 of 2019 is disposed of with the above terms without any order as 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.)