

16.08.2022
(D/L-16)
Ct.-18
(Susanta)

C.O. 2158 of 2014
With
I.A. No. CAN 2 of 2015 (Old CAN 11334 of 2015)
(Not in file)

Barnali Mondal & Anr.
-Vs-
Samir Saha

Mr. Haradhan Banerjee, Sr. Adv.
..... For the Petitioners.

Mr. Krishnendu Sarkar,
Ms. Meghla Das,
... For the Opposite Party.

The revisional application under Article 227 of the Constitution of India is directed against the order dated June 06, 2014 passed by the learned Additional District Judge, Kalyani, District Nadia, in Miscellaneous Appeal No. 6 of 2013 thereby affirming the order no. 125 dated June 25, 2013 passed by the learned Civil Judge (Junior Division), Kalyani, District Nadia in Miscellaneous Case no. 78 of 2006.

The opposite party no. 1 is the plaintiff of the connected suit for declaration of title and injunction.

The said suit being Title Suit no. 46 of 2005 is pending before the Court of learned Civil Judge (Junior Division), Kalyani, District-Nadia.

In the said suit an ad-interim order of injunction directing the parties to maintain status quo in respect of the suit property was passed on an application filed by the plaintiff.

The said ad-interim order of injunction was lapsed since it was not extended subsequently.

The learned Trial Judge however by the order no. 15 dated August 22, 2005 disposed of the said application for injunction restraining the petitioners from making any construction over the suit property except to raise the height of the parapet of the roof of the under construction building up to 2 ft. and allowed the petitioners to remove the bamboo support of the said roof.

The plaintiff alleging violation of the said order of injunction filed an application under Order XXXIX Rule 2A of the Code of Civil Procedure being Misc. Case No. 78 of 2006.

The learned Trial Judge by the order no. 125 dated June 25, 2013 allowed the said Misc. Case thereby holding that the petitioners are guilty of disobeying the said order of injunction, consequently directed the petitioner no. 1 and the petitioner no. 2 to be put in civil imprisonment for ten days of and twenty days respectively at their costs.

The said order was appealed from. The Appeal Court below by the order impugned has affirmed the order of the learned Trial Judge.

Mr. Haradhan Banerjee, learned Senior advocate appearing on behalf of the petitioners submits that the plaintiff have alleged that the petitioners have constructed a mezzanine floor in the suit property in violation of the order of injunction passed in the suit and both the Courts below relying on the commissioners report have come to a conclusion that the petitioners have executed such construction although the commissioner in his evidence has

clearly stated that he did not find any mezzanine floor in the said property.

Mr. Krishnendu Sarkar learned advocate for the plaintiff/opposite party submits that apart from construction of the mezzanine floor the petitioners in violation of the order of injunction have executed several other construction works as such the Courts below have rightly held that the petitioners are guilty of disobeying the said order of injunction.

Having heard the learned counsel for the parties and on perusal of materials on record, it appears that the plaintiff in his application under Order XXXIX Rule 2A of the Code have alleged that the petitioners by executing the following works in the under construction suit building have violated the said order of injunction:-

- (i)** Plastering of rooms/toilets/outside wall.
- (ii)** Mezzanine floor has been constructed.
- (iii)** Cementing of floor of the rooms.
- (iv)** Putting iron grills in Verandah/window.
- (v)** Fixing wooden door at staircase.

The learned Trial Judge by the order of injunction restrained the petitioners from executing any construction work in the said under construction building. Except the construction of a mezzanine floor, other works even if were done by the petitioners do not offend the said order of injunction.

The advocate commissioner who inspected the said property in his evidence, recorded in the said misc. case has stated that during inspection he did not find any mezzanine floor surrounded by walls.

The quality of evidence and degree of proof necessary to haul up a person in contempt is lacking in the present case, therefore, both the Courts below have committed error of law and fact in holding that the petitioners are guilty of disobeying the said order of injunction.

The order impugned accordingly is set aside.

C.O. 2158 of 2014 is thus allowed, without any order as to costs.

**I.A. No. CAN 2 of 2015
(Old CAN 11334 of 2015)**

In view of the disposal of the revisional application, the connected application although is appearing in the list but not on records, if pending, is also disposed of 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.)