

18.10.2022
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Sl. No. 11
Ct. No.32

CO 3253 of 2022

Eastern Engineering Corporation & Ors.
Vs.
Abhijit Sarkar

Mr. Sudip Deb
Mr. Sumitava Chakraborty
Ms. Sangita Chakraborty
..... for the petitioners

Mr. Sankar Paul
Ms. Tapati Sarkar
.....for the opposite party

The petitioner has filed the instant civil revision against two orders dated 8th September, 2022 and 28th September, 2022. By the first order, the interim order passed in favour of the petitioner on 8th October, 2021 was vacated; by the 2nd order, an application filed by the petitioner under Section 151 of the Code of Civil Procedure for recalling the order dated 8th September, 2022 was rejected.

The undisputed facts are that the petitioner was granted an ex parte order of injunction on 8th October, 2021 restraining the defendants from demolishing the boundary of the suit property and the main entrance of the suit property as well as trespassing and blocking the suit property in any manner until 8th November, 2021. The said interim order was passed in the title suit No. 1135 of 2021 filed by the petitioner before this Court. The interim order was thereafter extended and

remained subsisting until 8th September, 2022 when the interim order was vacated in the absence of the petitioner. The impugned order dated 8th September, 2022 records the absence of the plaintiff(petitioner) and the fact that the plaintiff is unwilling to continue with the suit. The petitioner filed the application under Section 151 CPC for recalling the order on 18th September, 2022. The ground given for the petitioner's absence from the learned Court below on the date on which the interim order was vacated, i.e., 8th September, 2022, was the ill-health of a relative of the advocate on record of the petitioner.

The second impugned order dated 28th September, 2022 relies on two decisions of the Supreme Court one under Section 151 of the CPC, the second being on the power to recall if the initial order is obtained by fraud on Court. There is no other reason recorded in the said order for refusing to entertain the recalling application or pass the relief sought for therein. The only point taken is that the interim injunction has been vacated due to the laches on the part of the plaintiff.

Although, learned counsel appearing for the opposite party/defendant in the title suit argues that the impugned order dated 8th September, 2022 is appealable in nature, this Court is not convinced of the

said objection since the impugned order dated 8th September, 2022 is virtually a 3-line order without disclosing any grounds for vacating the interim order which continued for a year (8th October, 2021-8th September, 2022) before it was vacated. It may also be relevant to state that the interim order was in place for a year without the opposite party taking any steps for vacating the interim order under Order XXXIX Rule 4 of the CPC.

The urgency in the present petition is that the defendant/opposite party is taking advantage of the interim order not being in place any more. The relevant pleading in the petition states that the opposite party is once again threatening to demolish the boundary wall of the suit property.

Since both parties are before this Court, no useful purpose would be served in keeping the proceedings pending. Having found both the impugned orders to be without any reasons, the orders dated 8th September, 2022 and 28th September 2022 are accordingly quashed.

The petitioner is directed to communicate this order to the learned Court below by 30th October, 2022, on which date the learned Court below is due to resume its functions.

The opposite party in the meantime shall not cause any disturbance to the suit property or cause trespass thereto until the petitioner takes further steps for additional protection from the learned Court below. This order shall remain in place until further orders are passed by the learned Court below on applications made by either of the parties.

(Moushumi Bhattacharya, J.)