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IN THE HIGH COURT OF ORISSA AT CUTTACK
CMP No. 680 OF 2022

Gokula Naik

....

Petitioner

Mr. Anam Charan Panda, Advocate
-versus-

Pitambar Naik and others

....

Opp. Parties

Mr. Suvashish Pattnaik,
Additional Government Advocate
(For Opp. Party No.12)

CORAM:
JUSTICE K.R. MOHAPATRA

Order No.

ORDER
09.09.2022

2. This matter is taken up through hybrid mode.
2. The Petitioner in this CMP seeks to assail the order dated 19th May, 2022 (Annexure-4) passed in C.M.A. No.112 of 2021 (arising out of I.A. No.071 of 2020), whereby learned 1st Additional Senior Civil Judge, Cuttack rejected an application under Section 151 C.P.C. filed by him to implement the order dated 20th January, 2021 passed in I.A. No.1 of 2020 (arising out of C.S. No.477 of 2020) through the Inspector-in-Charge, Dargha Bazar P.S., Cuttack.
3. Office note indicates that notice on Opposite Party No.1 has returned un-served with a postal endorsement 'Addressee left'. Notices on Opposite Party Nos.6 and 7 returned un-served as they refused to accept the same. Further, tracking report of Postal Department discloses that notices on Opposite Party Nos.2 to 5 and 8 to 11 have been delivered to them on 30th August, 2022. Thus, notices on Opposite Party Nos.2 to 11 are treated to be sufficient.

4. Mr. Panda, learned counsel for the Petitioner submits that in spite of service of notice on Opposite Party No.1, he did not contest either the interim application or the C.M.A. No.112 of 2021. Hence, the CMP can be disposed of in his absence. Considering such fact, this Court proceeds with final disposal of CMP.

5. Mr. Panda, learned counsel for the Petitioner submits that along with the plaint, the Petitioner filed an application under Order XXXIX Rules 1 and 2 C.P.C. in I.A. No.1 of 2020. Said application was allowed in part on contest vide order dated 20th January, 2021 with the following direction:

*“The interim application is **allowed** in part on contest but without any cost. The petitioners as well as the O.Ps are directed to maintain **status quo** over the I.A. schedule land i.e. Khata No.254, plot no.622 of mouza-Cuttack Sahar, Unit No.11, Odia Bazar till disposal of the suit.”*

In spite of the aforesaid order, the Opposite Parties are proceeding with construction over the suit land, i.e. Plot No.622 under Khata No.254 situated in mouza Cuttack Sahar, Unit No.11, Odia Bazar. As such, the Petitioner filed two applications, one under Order XXXIX Rule 2-A C.P.C. in I.A. No.113 of 2021 and another under Section 151 C.P.C. in C.M.A. No.112 of 2021. The petition under Order XXXIX Rule 2-A is pending for adjudication before learned trial Court. Since the Opposite Parties proceeded to make construction over the suit land, the Petitioner moved the petition under Section 151 C.P.C. and prayed to direct the Inspector-in-Charge, Dargha Bazar

Police Station, Cuttack to implement the order of status quo. Learned trial Court rejected the application holding that since the Petitioner has alternative remedy under the Code of Civil Procedure to file an application under Order XXXIX Rule 2-A C.P.C., an application under Section 151 C.P.C. for implementation of the order of status quo is not maintainable. Hence, he rejected the said application.

6. Mr. Panda, learned counsel for the Petitioner further submits that learned trial Court has duty to see that the order of status quo is respected. It cannot be mute spectator to the order of status quo being violated on the plea that the Petitioner has a remedy under Order XXXIX Rule 2-A C.P.C.. He relied upon the decision of this Court in the case of ***Smt. Manoj Manjari Mohapatra and another –v- Sri Kapila @ Kapilendra Mohapatra and another*** in CMP No.128 of 2021, wherein it is held as under:

“8. Thus, the Court has also the power to restore possession in exercise of power under Section 151 C.P.C. in the event a party is dispossessed in utter violation of order of injunction/status quo. But, while exercising discretion under Section 151 C.P.C., the Court must be extremely careful and circumspect and only when the Court is satisfied that the remedy under Order XXXIX Rule 2-A C.P.C. will not be sufficient to maintain the order passed or remedy the prejudice caused to the applicant, it may exercise such discretion. If necessary, the Court may also direct the police authority to render aid and assistance for implementation of the restraint order. It is the duty of the Court to see that the order of injunction/status quo is respected and maintained during pendency of the suit and suit property is protected. The Court has also the power to put back the parties in the same position

as they stood prior to issuance of the restraint order of give appropriate direction to the police authority to render aid to the aggrieved parties for the due and proper implementation of the orders passed in the suit.”

7. It is his submission that the application under Section 151 C.P.C. is not considered in the light of the ratio decided in the case of **Smt. Manoj Manjari Mohapatra and another** (supra). He, therefore, prays for setting aside the impugned order under Annexure-4 and to direct the Inspector-in-Charge, Dargha Bazar P.S., Cuttack to implement the order of status quo passed in I.A. No.1 of 2020.

8. Considering the submission made by learned counsel for the Petitioner and on perusal of the materials on record, it appears that alleging violation of the order of status quo, the Petitioner has filed two applications, one under Order XXXIX Rule 2-A C.P.C. and another under Section 151 C.P.C.. The petition under Order XXXIX Rule 2-A C.P.C. is pending for adjudication. Law is well settled that the Court cannot be a mute spectator to its order being violated.

8.1. This Court in the case of **Subal Kumar Dey –v- Purna Chandra Giri**, reported in 1989 (I) OLR 398 held at paragraph-9 as follows:

“9. Next question of consideration relates to the validity of direction of the trial court to the officer-incharge. Baliapal P.S. to render assistance for implementation of the order of injunction. As has been held in the decisions reported in AIR 1971 Andh Pra 33 (Rayapati Audemma v. Pothineni Narasimham) and AIR 1983 Cal 266 (Sunil Kumar Halder v. Nishikanta Bhandari), direction to the police for implementation 5

of order of temporary injunction is given by a Court in exercise of the inherent powers under Section 151, C.P.C. Inherent power is wide in its nature to protect the interest of the parties in a given case. It is not a power to be exercised for implementation of an order of the Court. Where violation of the order would be so prejudicial to a party that remedies or penalty for violation of the order available under the statute would not be sufficient, inherent power may be exercised. Therefore, a Court is to be careful before taking external help of police for implementation of the order.....”

8.2. Thus, the Court has ample power to exercise its discretion under Section 151 C.P.C., when the remedy under Order XXXIX Rule 2-A C.P.C. will not be sufficient to remedy the prejudice caused to the applicant. The Hon’ble Supreme Court in the case of **Meera Chauhan – v- Harsh Bishnoi and another**, reported in **(2007) 12 SCC 201** in paragraphs- 16, 17 and 18 held as follows:

“16. The power of Section 151 to pass order of injunction in the form of restoration of possession of the code is not res integra now,

17. In Manohar vs. Hira Lal [AIR 1962 SC 527] while dealing with the power of the Court to pass orders for the ends of justice or to prevent the abuse of the process of the Court, this Court held that the courts have inherent jurisdiction to issue temporary order of injunction in the circumstances which are not covered under the provisions of Order 39 of the Code of Civil Procedure. However, it was held by this Court in the aforesaid decision that the inherent power under Section 151 of the Code of Civil Procedure must be exercised only in exceptional circumstances for which the Code lays down no procedure.

18. At the same time, it is also well settled that when parties violate order of injunction or stay order or act in violation of the said order the Court can, by exercising its inherent power, put back the parties in the same

position as they stood prior to issuance of the injunction order or give appropriate direction to the police authority to render aid to the aggrieved parties for the due and proper implementation of the orders passed in the suit and also order police protection for implementation of such order.”

8.3 Relying upon the aforesaid case laws, this Court has laid down the principle in ***Smt. Manoj Manjari Mohapatra and another*** (supra) as stated above.

8.4. Further, the Court has to see that parties to the proceeding should respect the order of the Court. In the instant case, parties are directed to maintain status quo over the suit property. Hence, the Court has to see that the order of status quo passed by it is respected by the parties. A relief under Order XXXIX Rule 2-A C.P.C. may not be sufficient in all cases to mitigate the loss suffered by a party due to violation of order of injunction. Thus, the Court has a duty to evaluate the grievance of the Petitioner *vis-à-vis* the loss likely to be suffered, if timely intervention is not made to see that the order of status quo is implemented. On perusal of the impugned order under Annexure-4, it appears that this material aspect was not taken into consideration by learned trial Court while adjudicating the petition under Section 151 C.P.C. in C.M.A. No.112 of 2021.

9. In that view of the matter, the impugned order under Annexure-4 is set aside and the matter is remitted back to learned 1st Additional Senior Civil Judge, Cuttack to adjudicate C.M.A. No.112 of 2021 filed under Section 151 C.P.C. afresh, giving opportunity of hearing to the parties concerned.

10. Since the Petitioner alleges that parties are proceeding with construction over the suit land, learned trial Court shall make an endeavour to dispose of the application under Section 151 C.P.C. by the Petitioner in accordance with law at an early date. While adjudicating the said petition, learned trial Court shall also verify as to whether a fresh notice is required to be issued to the Opposite Parties in the instant case.

11. Since this order is passed in absence of the Opposite Parties, they may move this Court for variation of the same, if they feel aggrieved.

Urgent certified copy of this order be granted on proper application.

(K.R. Mohapatra)
Judge

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