

23.08.2023
Sl. No.9(DL)
srm

C.O. No. 66 of 2023

Sailen Paik & Anr.

Versus

Sujit Halder & Ors.

Mr. Jayanta Bhattacharya,
Mr. Lenin Sardar

...for the Petitioners.

Despite service, none appears on behalf of the opposite parties. Affidavit-of-service is taken on record.

This revisional application arises out of an order dated August 18, 2022 passed by the learned Civil Judge (Senior Division), 1st Court at Baruipur, South 24-Parganas, in Title Suit No.159 of 2021.

By the order impugned, the learned court below allowed an application under Section 151 of the Code of Civil Procedure, filed by the defendant Nos.2 and 3.

The defendant Nos.2 and 3 filed the said application for permission to complete the construction of their residential house, which was already completed up to the lintel level before the ad interim order of injunction was passed. The money was sanctioned under the PMAY scheme.

According to the said defendants, if they were not allowed to complete the construction on the basis of the scheme, the last instalment received, would go back and the partial construction after receipt of the two instalments would be lying wasted and unutilized. Unless the said defendants, who lived below the poverty line, were allowed to utilise the funds, the rights emanating from the social security scheme of housing for all, would be denied. Thus, such prayer was made for relaxation of the ad interim order, as an equitable relief.

The learned court below found that the defendants' shares were not in dispute. Only the portion over which the parties would get their right, title and interest upon partition being effected in metes and bounds, was the bone of contention.

The court was satisfied that the funds had been sanctioned under the PMAY scheme and the construction up to the lintel level was in existence. The first instalment was received on January 28, 2020. The second instalment was received on October 22, 2020 and the third instalment was received on August 12, 2021. The ad interim order of injunction was passed on March 16, 2021, whereby the parties were directed to maintain *status quo* with regard to the nature, character and possession of the suit property. Therefore, the fact that the majority of the funds had been utilised for

construction up to the lintel level, was not in dispute. Secondly, the unutilised fund would go back, if the defendants were not allowed to complete the structure. The learned court below found that denial of such permission to complete the construction, would cause undue hardship to the defendants. Hence, the learned court below relaxed the ad interim injunction. The defendant Nos.2 and 3 were allowed to make construction in accordance with the scheme granted in their favour, without claiming any equity in respect of such construction. Such construction was also made subject to the ultimate decision in the suit. The defendants were directed to file a report upon completion of the construction, from the local body, to show that they had completed such construction strictly by following the scheme.

The contention of the learned Counsel for the plaintiffs that the right of the plaintiffs would be affected if the construction was allowed to be completed, is not correct. The learned court below had made such construction subject to the final decision of the suit and had specifically directed that the defendants could not claim any equity in respect of the said construction.

Secondly, the learned court below had also cast a duty upon the defendants to file a report from the appropriate authority before the learned court below, indicating that the

construction was made strictly in accordance with the scheme. It also appears that the construction upto the lintel level was in existence when the ad interim order was passed. Thus, the apprehension that the better portion of the property would be utilised for such construction, is not correct. Construction upto the lintel level was in existence over the suit property on the day the ad interim order was passed.

Under such circumstances, this Court does not find any reason to interfere with the order impugned. There is no reason for this Court to either set aside or modify the order impugned.

The revisional application is, thus, dismissed.

The defendant Nos.2 and 3 shall continue with construction and complete the same strictly in accordance with the direction of the learned court below, and file a report as directed.

There shall be no order as to costs.

Parties are to act on the basis of the server copy of this order.

(Shampa Sarkar, J.)