

01.05.2023
rc/ct.no.237
Item No.24

C.O.No. 254 of 2023
Smt. Tapasi Koley
Vs.
Ashok Adak & Ors.

Mr. Siva Prasad Ghose ...for the petitioner

Mr. Sukanta Chakraborty
Mr. Anindya Halder ...for the Opposite Parties

This revisional application assailed the order no. 7 dated December 22, 2022 passed by the learned Civil Judge, Junior Division, 4th Court at Serampore, Hooghly in connection with Title Suit No. 528 of 2022 whereby the learned judge refused to entertain the application under Section 151 of the Code of Civil Procedure seeking police assistance to protect the ex parte ad interim injunction passed by the learned Court on September 23, 2022.

Learned advocate appearing on behalf of the petitioner submitted that the learned trial judge can very well exercise the inherent power under Section 151 of the Code of Civil Procedure to protect the ex parte ad interim injunction. In support of his contention he has referred to several judgments as well as that of the Hon'ble Apex Court in Meera Chauhan Vs. Harish Bishnoi & Anr. reported in (2007) 12 SCC 2001.

Learned advocate on behalf of the opposite parties relied upon the judgment passed by a coordinate Bench in C.O.No. 3197 of 2015 (Basanti Devi Shaw & Ors. Vs.

Chandra Prakash Gupta & Ors.). Learned advocate for the opposite parties submitted that the opposite parties never violated the ex parte ad interim injunction order. So question of exercise of power under Section 151 of the Code of Civil Procedure seeking police assistance does not arise.

Learned advocate on behalf of the opposite parties submitted that the opposite parties never violated the ex parte ad interim injunction order in any manner whatsoever.

On careful perusal of the order impugned I find that the learned judge refused the application under Section 151 of the Code of Civil Procedure relying on a case of AV Kunhumerhammed Vs. KIV Mammi reported in AIR 1999 Ker 383(DB) wherein it was observed that the Court shall not interfere in matter involving civil rights with an order of police protection on the basis of an ex parte ad interim injunction of the Civil Court.

However, in view of the decisions referred to on behalf of the petitioner as well as stage of proceedings pending before the Trial Court I am of the view that the learned judge can very well exercise the power under Section 151 of the Code of Civil Procedure seeking police assistance for the protection of the ex parte ad interim injunction.

It is submitted that the opposite parties did not participate at the time of hearing of the application under Section 151 of the Code of Civil Procedure.

In the aforesaid view of the matter I am of the opinion that the order impugned dated December 22, 2022 is not sustainable in law and is liable to be set aside.

Learned Trial Judge is requested to rehear the application under Section 151 of the Code of Civil Procedure pursuant to the aforesaid observation after giving an opportunity of being heard to the opposite parties.

Learned Trial Judge is also requested to dispose of the application under Section 151 of the Code of Civil Procedure seeking police assistance within 15 days from the date of communication of this order.

Both the parties to the suit shall appear before the learned Trial Court on the date fixed for hearing.

With the above observations and directions this revisional application stands disposed of.

There shall be, however, no order as to costs.

Urgent certified website copy of this order, if applied for, be furnished to the parties upon compliance of necessary formalities.

(Bibhas Ranjan De,J)