

18.4.2023
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Ct. no. 652
sb

CO 549 of 2020

Swapan Kumar Mukherjee & Ors.
Vs.
Sadhana Mukherjee & Ors.

Mr. Bikash Shaw ...for the petitioners

This is an application under Article 227 of the Constitution of India seeking direction upon the learned Civil Judge (Senior Division) at Uluberia for expeditious disposal of petitioner's application under Section 151 of the Code of Civil procedure within a stipulated time frame.

The petitioners contended that the petitioners/plaintiffs filed aforesaid suit for declaration and consequential relief under Section 36, 37A, 38 of the Bengal Money Lenders Act. In the said suit, the petitioners prayed for declaration and for injunction. The defendant no. 1 appeared in the said suit and filed written statement denying all material allegations made in the plaint. The defendant claimed that the defendants are the owners of 2/3 share in the suit property.

Learned counsel for the petitioners submits that the matter remained pending for a considerable period of time and the plaintiffs/petitioners had to loiter in the court premises in the process of to and fro in between the two

courts. Since the construction of the suit property has become dilapidated, on 25.9.2019, the petitioners filed application under Section 151 of the Code of Civil Procedure seeking reconstruction of the dilapidated house and reconstruction of cow shed in place of its old site but the court below is granting unnecessary adjournments to the defendant/opposite parties and thereby allowing the opposite parties/defendants to take recourse of the dilatory tactics. Learned court below failed to appreciate that the opposite parties have sole intention to deprive the right title and interest of the plaintiffs from the suit property. Accordingly, the plaintiffs submit that due to seeking unnecessary adjournments by the defendant/opposite parties, the hearing of application under Section 151 of the Code of Civil Procedure could not be completed and for which the plaintiffs/petitioners have no other alternative but to live in within the dilapidated construction at the risk of their lives. Accordingly, the petitioners have prayed for seeking necessary direction for expeditious disposal of the application filed by the petitioners under Section 151 of the Code of Civil Procedure within a stipulated time frame.

Since the prayer made by the petitioner is very innocuous and if the same is allowed in terms of the prayer made in the application, neither party will have a cause to prejudice, the process of serving copy of

revisional application and the notice upon the opposite party is dispensed with.

In view of above facts and circumstances of the case and considering long pendency of the application and that the prayer made by the petitioner is justified and if allowed in terms of the prayer, neither party will have a cause to prejudice, the prayer made by the petitioner herein is allowed.

C.O. 549 of 2020 is hereby disposed of with a direction upon the learned Civil Judge (Senior Division) at Uluberia to dispose of petitioner's application under Section 151 of the Code of Civil Procedure, filed in Title suit no. 40 of 2000 within a period of eight weeks from the date of communication of the order without being influenced by any observation made herein.

Learned court below is also requested to make every endeavour for expeditious disposal of the Title suit no. 40 of 2000, since it is pending for a long time.

Urgent photostat certified copy of this order, if applied for, be given to the parties upon compliance of all requisite formalities.

(Ajoy Kumar Mukherjee, J.)