

30.08.2023
Court No. 19
Item No.31
CP

C.O. No. 707 of 2020

With

CAN 1 of 2023

(CAN not in the file)

Mohammed Asgar @ Sanu

Vs.

Jitendra Nath Banerjee Memorial Trust & ors.

Mr. Anup Mukhopadhyay
Mr. Anirban Saha

....for the petitioner.

Mr. Sourav Sen
Mr. Sudip Patra
Mr. Asmanur Quail
Mr. Atanu Basu
Mr. Indranuj Dutta

.....for the opposite parties.

The revisional application arises out of an order dated January 22, 2020, passed by the learned Judge, 12th Bench, City Civil Court at Kolkata, in Title Suit No. 654 of 2015.

By the order impugned, the learned court below rejected an application filed by the defendant no. 1 in the suit, for local inspection. The application under Order 39 Rule 7 of the Code of Civil Procedure was rejected without any reasons apart from the fact that the same was belated.

This court is of the view that the order suffers from material irregularity, insofar as, as the reason assigned by the learned court below is not sustainable. The learned court ought to have decided

the matter on merits, as to whether local inspection would be necessary or not. A summary rejection of the said application, on the ground of the same being belated at the stage when the injunction matter was not disposed of, is erroneous. However, instead of remanding the matter to the concerned court, this court is of the view that the application and the merits of the same can be decided here and now.

Mr. Mukhopadhyay, learned advocate for the petitioner, submits that as in the application for injunction at paragraphs 37 and 41, the plaintiffs have urged that the defendants were stacking building materials and were disturbing the ingress and egress of the plaintiffs. An inspection would be necessary, as the defendants deny such contention.

Mr. Sen, learned advocate for the plaintiffs/opposite parties, submits that the suit is one for declaration and permanent injunction with regard to management of a society. Reference is made to the prayers in the plaint.

The plaintiff prayed for a decree that the existing committee of the plaintiff no. 2, Association, was a legally constituted body and the said body was entitled to run the Association. That the defendants did not have any authority to pose as office bearers. Further prayers of permanent injunction restraining the defendants from disturbing the existing

committee described in Schedule B of the plaint, restraining the defendants from using the logo, emblem, mark, symbol or batch of the plaintiff no. 2, Association and from removing the plaintiff no. 3 from the post of honorary secretary, had been made. Mandatory injunction upon the defendant no. 2 to hand over the documents etc. and to allow the functioning of the gymnasium, are some of the other reliefs.

Mr. Sens submits that the prayers in the application for injunction are for orders restraining the defendants from disturbing the ingress and egress of the plaintiff no. 2 and from causing any disturbance from holding the meeting on May 16, 2015.

Coming to the application for local inspection, it appears that the defendants have contended that they did not cause any loss or damage to the property in question and the allegation of construction and stacking building materials were incorrect. A local inspection would reveal that the entire contention of the plaintiffs in the suit, were based on surmise and conjecture. Thus, a local inspection was necessary to enable the court to ascertain the exact status of the suit property.

Some of the points for local inspection are as hereunder:

(a) To inspect the entire premises by taking floor wise measurements of the rooms as also the present condition of the suit premises.

(b) To ascertain, whether any business was carried on by the defendants

(c) To inspect and measure the Gymnasium and prepare a list of instruments, tools, equipment, amenities and apparatus, lists of members etc.

(d) To inspect the present condition of the toilet and whether proper amenities had been provided or not.

This court is of the view that the points for local inspection are not relevant, either for the purpose of adjudication of the suit or for the purpose of disposal of the injunction application. The suit is the result of a fight between two groups or committees, who want to run the show and manage the affairs of the society.

The prayers do not indicate that there were any allegations with regard to alleged construction by the defendants. Neither any injunction has been prayed for, restraining the defendants from raising any construction or from running any business from the suit premises.

If such prayers are absent in the plaint and in the injunction application, the apprehension of the defendants that an injunction may be passed on

such allegations, is unfounded. The suit is framed on a completely different cause of action. The prayers against the defendants also, do not indicate that any restrain orders from constructing or renovating the premises have been prayed for. No prayers with regard to the building belonging to the All Bengal Physical Culture Association, have been made.

Under such circumstances, the order impugned does not require any interference. The revisional application is disposed of.

With the disposal of the revisional application, connected applications, if any, stands disposed of.

There shall be no order as to costs.

This order shall not influence the learned court below while deciding the pending applications and the suit.

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

(Shampa Sarkar, J.)