

31.08.2023
Sl. No.2(DL)
srm

C.O. No. 837 of 2023

Eastern Engineering Corporation & Ors.

Versus

Abhijit Sarkar

Mr. Sudip Deb,
Ms. Sangita Chakraborty,
Mr. Aranyak Saha

...for the Petitioners.

Mr. Sankar Paul,
Mr. Imtiaz Ahmed,
Ms. Tapati Sarkar

...for the Opposite Party.

This revisional application arises out of an order dated February 14, 2023 passed by the learned Civil Judge (Junior Division), 6th Court at Howrah, in connection with Title Suit No.1135 of 2021.

By the order impugned, the learned court below partly rejected an application filed under Section 151 of the Code of Civil Procedure. By the said application, the petitioners prayed for police vigil, police picket and permission to repair a damaged boundary wall. Allegation is that the defendant had done serious damage to the boundary wall when they were trying to encroach into the suit property.

Reliance has been placed on a decision of this Court in a writ petition which would indicate that the contention of the

defendant that the petitioners had encroached a portion of public property, had been turned down. Further reliance has been placed on an ad interim order of injunction passed by the learned court below, restraining the defendants from disturbing the peaceful possession of the petitioners.

It is submitted that the boundary wall is required to be repaired because of the substantial damage that it has sustained. The petitioners run a factory, where there are several employees. Hence, the protective order would be necessary. It is further contended that when the ad interim order has been passed restraining the defendant from disturbing the peaceful possession, there should not be any impediment on the part of the petitioners to complete the repair works.

Learned Advocate for the opposite party/defendant submits that there is no damage to any boundary wall on the eastern side. It is submitted that under the garb of repair, the petitioners were trying to block the entrance of the defendant by raising further construction on the eastern side of the property.

Having heard learned Counsel for the parties, this Court is of the view that before any order of repair of the boundary wall is passed during the pendency of the suit, certain issues are required to be brought to the notice of the court below.

- (a) Whether there is any broken boundary wall surrounding the factory premises.
- (b) Whether there is a boundary wall on the eastern side of the suit property which, if reconstructed, would amount to blocking the egress and ingress of the defendant.
- (c) Whether the boundary wall of the factory premises is in such a condition that repair would be necessary.

Under such circumstances, for the court to pass necessary orders under Section 151 of the Code of Civil Procedure allowing such repair, the present status of the property is required to be ascertained. This can only be done by appointment of an Advocate-Commissioner.

The learned court below is directed to appoint an Advocate-commissioner within two weeks from the date of communication of this order. Cost of such inspection shall be borne by the petitioners. The court shall formulate points by referring to the discussion hereinabove. The learned Advocate-Commissioner shall conduct an inspection in the presence of the parties, upon notice to them and file a report. If the report indicates that for the security of the petitioners' compound, factory and the property, the existing boundary wall requires any repair, necessary order will be passed. Otherwise, the

repair shall not be allowed. The order impugned is modified as above.

This Court has not gone into the factual aspects and leaves it for the learned court below to determine the issue on the basis of the report of the learned Advocate-Commissioner and upon hearing the parties.

The entire exercise shall be completed within a period of two months from the date of communication of this order.

The revisional application is, thus, disposed of.

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.)