

23 13.04.2023
RP Ct. No. 01
AN

MAT 487 of 2023
With
IA No. CAN 1 of 2023

Uttam Mondal
Vs.
Navadiganta, a registered Society

Mr. Ranjit Jaiswal
Mr. Partha Sarathi Chakraborty
... For the Appellant

Mr. Soumik Ganguli
... For the respondent

1. The alleged contemnor in CPAN 1257 of 2022 has preferred this appeal challenging the order dated 17.02.2023 passed by the learned Single Judge.

2. Learned counsel for the appellant submits that the appellant was in possession in respect of a particular portion of the joint property in respect of which a partition suit being T.S. No. 85/2014 is pending before the learned Civil Judge (Senior Division), Diamond Harbour. He submits that the learned Single Judge, by the order impugned, directed that the premises to be sealed and a police picket to be posted thereat and the sealing of the premises shall abide by any final order that may be passed by the learned Civil Judge (Senior Division), Diamond Harbour in the aforesaid title suit being T.S. No. 85/2014. The Superintendent of Police was also directed to cause regular vigil to the aforesaid premises.

3. Learned counsel for the applicant in the contempt application/respondent no. 1 in the appeal

submits that the Civil Court has passed an order of status quo and such status of the property as on date of the passing of the status quo order should be maintained.

4.It appears from the order dated 29.03.2014 passed by the learned trial judge on an application under Order XXXIX Rule 1 and 2 of the Civil Procedure Code filed in the partition suit that the plaintiffs and the defendant nos. 1 to 5 were directed to maintain status quo over the schedule suit property as it stood on the date of the passing of the said order, that is, 29.03.2014 with regard to the nature and character of the property till the next date fixed. It has been submitted by the learned counsel for the parties that such order was made absolute subsequently. Therefore, the Civil Court only directed the status quo with regard to the nature and character of the property in question to be maintained and there was no adjudication by the Civil Court, as it appears from the order passed therein, with regard to the respective possession of the parties in respect of the suit property.

5. In view of such factual position, this Court is of the view that the direction passed upon the concerned Police Authorities to seal the premises is to be interfered with as sealing of the premises would amount to restraining the party/parties in possession of the suit property to possess the same. In other words, the said order amounts to ousting person (s) from his/their possession. However, taking note of the fact that the parties are fighting against

each other with regard to their respective possession in the premises in question, we leave it open to the parties to approach the Civil Court for an order with regard to the removal of the respective padlocks from the property as it appears from the records that both the parties have put their respective padlocks in the property in question. The impugned order directing the sealing of the premises by the Police Authorities shall continue till a decision is taken by the Civil Court. Once the Civil Court decides the issue with regard to possession of the premises in question, the Superintendent of Police shall remove the padlock upon a direction to that effect being passed by the Civil Court in the light of the observations made hereinbefore.

6. The parties will be at liberty to approach the Civil Court for an order and if an appropriate application is filed, the Learned Civil Judge (Senior Division), Diamond Harbour is requested to take up the said application(s) on an urgent basis keeping in mind that the party (ies) is/are out of possession and dispose of the same as expeditiously as possible but positively within a period of three weeks from the date of filing of such application(s) after affording an opportunity of hearing to the respective parties.

5. With the above directions, this appeal stands **disposed of**. Consequently, the connected application also stands disposed of. No costs.

6. Urgent certified photostat copy of this order, if applied for, shall be given to the parties as expeditiously

as possible on compliance of all necessary formalities.

(T. S. Sivagnanam)
Acting Chief Justice

(Hiranmay Bhattacharyya, J.)