

07.12.2023

Ct. no.19

DL-16

(PP)

C.O. 982 of 2023

Mst. Serifan Bibi

Vs.

Sk. Punjabi & Ors.

Mr. Sukumar Ghosh,
Ms. Moumita Ghosh

....for the petitioner.

Despite service, none appears to oppose this application.

This Court does not deem it necessary to keep the revisional application pending, although the opposite parties are not represented.

The plaintiff/petitioner is aggrieved by an order dated September 9, 2022 passed by the learned Civil Judge (Sr. Division), 1st Court at Tamluk, Purba Medinipur in Title Suit No.4 of 1995, which is pending before the learned Civil Judge (Sr. Division), 1st Court, Tamluk, District – Purba Medinipur.

By the order impugned, the application for modification of the order dated April 11, 2022, was rejected. By order dated April 11, 2022, the application under Order 39 Rule 4 read with Section 151 of the Code of Civil Procedure, filed by the petitioner, was rejected. The petitioner's prayer for modification of the order of temporary injunction dated June 19, 1996 was not accepted by the Court. The petitioner prayed for such modification on the ground that her house had been destroyed during

Amphan and she had received some funds/aid under the Bangla Abas Yojana Scheme. She should be allowed to construct. The learned Court rejected the said application under Order 39 Rule 4 on the ground that the plaintiff/petitioner being the dominus litis, had herself prayed for an order of temporary injunction and could not pray for the modification. That apart, the application for modification did contain any document which would indicate that financial help had been received by the plaintiff under the alleged government scheme, that is, Banglar Abas Yojana. By the same order, the application of the defendant no.1(b), also filed for modification of the order on similar grounds, was rejected. Both the applications were turned down by the learned Court below.

Subsequently, the petitioner again filed an application under Sections 151 and 152 of the Code of Civil Procedure, praying for modification of the earlier order of rejection of the application under Order 39 Rule 4 of the Code of Civil Procedure. The learned Court was of the view that the plaintiff was dominus litis, who had prayed for an order of injunction. The plaintiff cannot turn around and pray for modification of the said order. The learned Court further held that when the application under Order 39 Rule 4 of the Code of Civil Procedure was rejected on the ground that the construction of a

new dwelling house after demolishing the existing one, will complicate the suit. The plaintiff/petitioner contends that documents are available with the plaintiff to show that the money under the scheme had been sanctioned and part instalment was received by the plaintiff.

The plaintiff prays that she does not want to demolish the earlier existing structure, but only repair the existing mud house with the help of the Government help under the Bangla Abas Yojana.

This Court is of the view that the funds received under the scheme have to be utilised in a particular manner and the construction has to be done as per the model plan given by the authorities. It appears that the application for injunction has been disposed of. The order impugned does not call for interference.

The petitioner is at liberty to pray for modification of the injunction order by filing an application under Order 39 Rule 4 annexing all relevant documents relating to receipt of the funds. It appears that the earlier order of rejection was on the ground of inadequate documents. The learned Court below shall dispose of the said application in accordance with law upon taking into account the subsequent events and changed circumstances. The contesting defendants will be given an opportunity to deal with such application, by filing objection.

The revisional application is disposed of without any interference with the order impugned.

There shall be no order as to costs.

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

(Shampa Sarkar, J.)