

05.07.2023
Court No.19
Item no.18
CP

C.O. 1138 of 2023

Somnath Das @ Somenath Das
Vs.
Sri Sachin @ Sachindranath Das & ors.

Mr. N. G. Sarkar
Mr. Devranjan Das

... for the Petitioner.

Mr. Gopal Ch. Ghosh
Mr. R. Mondal
Mr. Sayan Sengupta

....for the opposite parties.

The reivisional application has been filed challenging an order dated February 27, 2023 passed by the learned Civil Judge (Junior Division), 3rd Court, Paschim Medinipur in J. Misc. Case No. 52 of 2022. J. Misc. Case No. 52 of 2022 is an application under Order 9 Rule 9 of the Code of Civil Procedure, for restoration. Title Suit No. 05 of 2010, which was dismissed for default on January 27, 2022.

The plaintiffs filed an application under Order 9 Rule 9 of the Code of Civil Procedure which was registered as J. Misc. Case No. 52 of 2022, praying for restoration of the suit.

On February 9, 2023 the opposite parties filed an application under Order 39 Rules 1 and 2 of the Code of Civil Procedure and an ad-interim order of injunction was passed ex-parte.

By the said order, both the parties were directed to maintain status quo with regard to the A Schedule property till March 13, 2023.

Thereafter, learned Civil Judge (Junior Division), 3rd Court, Paschim Medinipur by order dated February 21, 2023 vacated the ad-interim order. The court came to a finding that the ad interim order of injunction had been obtained when the suit had already been dismissed, by misleading the court. The application for injunction was rejected, upon imposition of cost of Rs.500/-.

Another application under Section 151 read with Section 141 of the Code of Civil Procedure was filed by the opposite parties, for re-imposition of the ad interim order of injunction passed on February 9, 2023. The learned court allowed the application under Section 151 of the Code, by extending the ad interim order of injunction, which had been vacated. The suit had not been restored even at that stage.

Aggrieved, the defendant no. 2 has approached this court with the contention that when the suit itself was non est in the eye of law and had not been restored for 2 years, the question of extension of the ad interim order passed on February 9, 2023, did not arise.

Mr. Ghosh, learned advocate appearing on behalf of the plaintiffs/ opposite parties submits that

the provisions of Section 141 of the Code of Civil Procedure read with Section 151 of the Code of Civil Procedure entitles the learned court below to pass an ad interim order of status quo in order to protect the property in case of certain emergent situations. It is further submitted that a Misc. Appeal was also preferred by the petitioner which has been suppressed before the court. Learned counsel contends that the order impugned is an appealable order.

Having heard the learned advocates for the respective parties, this court is of the view that Section 141 would not help the opposite parties in this case. The section provides that the procedures prescribed for suits can be made applicable only insofar as they are applicable to miscellaneous proceedings.

In the facts of this case, when the suit itself did not exist, the proper procedure for the court ought to have been to decide whether the suit would be restored or not and if the learned court found materials to restore the suit, the court should have then proceeded with the hearing of the application under Section 151 read with Section 141 of the Code, after restoration of the suit. Procedural provisions under the Code have been made applicable in case of miscellaneous proceedings in a court of civil

jurisdiction, including proceedings under Order IX Rule 9, but not those provisions which deal with substantive rights. This is not a case where the inherent power should have been invoked to restore an ad-interim order which was vacated upon imposition of cost in a dismissed suit. Such power can be exercised under special circumstances. The time lines are relevant in order to establish that the conduct of the plaintiffs would not warrant exercise of inherent power in the facts of this case.

The suit was dismissed on January 27, 2022. Restoration application was filed on May 19, 2022 and was kept pending. After a year from dismissal of the suit an application under Order 39 Rules 1 and 2 of the Code of Civil Procedure was filed by the plaintiffs on February 9, 2023. An ad interim injunction was passed ex parte, when there was no suit in the eye of law. The said order was vacated by the court by order dated February 21, 2023 upon imposition of cost of Rs.500/- upon holding that the defendants had misled the court. Again, the said ad-interim order was extended by invoking power under Section 151 and 141 of the Code of Civil Procedure, by order dated February 27, 2023, when the suit was still not restored. No reasons were assigned for the sudden change of judicial mind.

In my view, the learned court should not have invoked the inherent power, as no emergent situation had emerged.

The court has not disclosed any justification as to what exigencies occurred within six days, for the court to have adopted such procedure to extend an ad interim order in a dismissed suit, which had been vacated earlier, upon imposition of cost.

The entire process, in my opinion, suffers from irregularities. The learned court below did not disclose any reason for the need to re-impose the order of ad-interim injunction. In view of the fact that the order impugned was passed in an application under Section 151 read with 141 of the Code, this Court has jurisdiction to entertain this revisional application. The same court which vacated the ad-interim order six days earlier with cost, again re-imposed the same without assigning any reasons as to why the earlier order should be recalled, The order impugned is set aside.

The Misc. Appeal No. 37 of 2023 filed by the petitioner is also disposed of accordingly. The learned court below is directed to dispose of the application for restoration of the suit within a period of one month from date of communication of this order. Thereafter, the plaintiffs shall be at liberty pray for injunction.

The revisional application is accordingly disposed of.

There shall be no order as to costs.

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

(Shampa Sarkar, J.)