

16.08.2023
Sl. No.17(DL)
srm

C.O. No. 1318 of 2023

Saikat Samaddar

Versus

Kaliprosad Banerjee

Mr. Sounak Bhattacharya,
Mr. Sounak Mandal

...for the Petitioner.

The revisional application has been filed challenging an order dated March 2, 2023 passed by the learned Civil Judge (Junior Division), 2nd Court at Baruipur, South 24-Parganas, in Title Suit No.316 of 2022.

By the order impugned, the learned court below rejected an application under Section 151 of the Code of Civil Procedure filed by the petitioner, who is the plaintiff in the title suit.

According to the petitioner, during the subsistence of an ad interim order of injunction the defendant forcefully put a padlock over the main entrance of the suit property which used to be a shop room. The plaintiff lodged a diary in the police station. The plaintiff prayed for a mandatory order for removal of the padlock and restoration of possession. The defendant/opposite party contested such application by filing

a written objection. In the written objection, it was clearly stated that in the month of August, 2013 one Krishna Samaddar, who was the tenant, had abandoned her tenancy by removing all her articles and furniture. The tenancy had been determined from the 1st day of August, 2013. The defendant took khas possession of the premises and continued to be in possession of the same. That the plaintiff was not in possession and did not run any business from the said premises. The plaintiff did not have right, title, interest and possession in respect of the suit premises. Suddenly on November 15, 2021, the plaintiff went to the suit premises, abused the defendant and asserted his right of tenancy. Immediately, the defendant approached the police authorities and also initiated a proceeding under Section 144(2) of the Code of Criminal Procedure before the learned Executive Magistrate at Baruipur. The defendant also transferred the entire property in favour of his son Kushal Banerjee by executing a deed of gift dated December 20, 2021. The suit was filed thereafter. The suit room had been used as a garage for four-wheelers and motorcycle.

Thus, the learned court found that the question of violation of the ad interim injunction did not arise. The learned court below, upon perusal of the documents and upon coming to the conclusion that there were disputed questions of fact,

held that the plaintiff failed to prove a clear cut case of dispossession during the subsistence of an ad interim order. There were rival contentions and such issue could not be decided without a clear picture as to what happened in the interim period. Hence, the petitioner's application was rejected.

This Court is of the view that the learned court below rightly held that an order in the nature of mandatory injunction of breaking open the padlock and restoration of the possession in favour of the plaintiff, should not be passed in the absence of clear evidence by which the allegation of dispossession would be substantiated.

The revisional application merits no consideration and the same is dismissed.

However, the petitioner is always at liberty to approach the Court by filing an application under Order 39 Rule 2A of the Code of Civil Procedure. If such application is filed the same shall be considered and disposed of expeditiously, in accordance with law and upon recording evidence.

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.)