

07.07.2023
Sl. No.6(DL)
srm

C.O. No. 1360 of 2022
Arka Bhattacharyya & Ors.
Versus
Utpal Roy

Ms. Sohini Chakraborty,
Ms. Prajaaini Das

...for the Petitioners.

Mr. Partha Pratim Roy,
Mr. Sarbananda Sanyal

...for the Opposite Party.

The revisional application has been filed challenging an order passed by the learned Additional District Judge, Fast Track Court, Rampurhat, Birbhum in Miscellaneous Appeal No.39 of 2017, thereby, affirming an order No.134 dated July 30, 2017 passed by the learned Civil Judge (Senior Division), 2nd Court at Rampurhat, Birbhum.

Both the learned courts below found that the petitioners were guilty of violation of the order of injunction. That slowly and surreptitiously construction was made by the petitioners under the garb of minor painting works which the Hon'ble High Court had allowed, while disposing of C.O. No.2794 of 2015.

Ms. Chakrabarty, learned Advocate for the petitioners submits that the construction and/or plastering work had been completed before the petitioners came to know that an *ex parte* order of injunction had been passed. After the order of the High Court, no construction or repairing had been done. The petitioners submit that the order of civil imprisonment for a period of seven days was harsh and excessive, under the circumstances.

Mr. Roy, learned Advocate for the opposite party/plaintiff submits that both the fact finding courts had come to the conclusion that the petitioners had executed rampant construction. Mr. Roy submits that this Court, sitting in a superintending jurisdiction, should not interfere with the evidence which has already been collected by the learned courts below with regard to the violation of the order of injunction and on the basis of which, the petitioners were punished.

It appears that the learned lower appellate court found that the learned trial court had appreciated the evidence which was adduced during the trial of the miscellaneous case. The inspection reports of the commissioners were duly considered, which were marked as exhibits 2 to 4. The commissioners came to the conclusion that slowly, construction and plastering

works were carried out on the schedule property, causing gradual improvement of the property. The OPW-1 admitted in his cross-examination, that the inside and outside walls of the building had been plastered and painted. The photographs along with DVD were also produced before the learned courts below.

Thus, this Court is not in a position to re-assess or re-appreciate the evidence which had been considered by the learned courts below. It was specifically found that the petitioners had gradually plastered, repaired and painted the property, thereby, enhancing the quality of the schedule property during the subsistence of the order of injunction.

Order XXXIX Rule 2A of the Code of Civil Procedure empowers the learned trial court to detain the offender in a civil prison, for a term not exceeding three months, in case of violation of an order of injunction. The learned trial court did not act contrary to the power vested in it under the Code of Civil Procedure. Moreover, it is a matter of public policy that orders passed by courts should be complied with and in case of violation, the court should come down heavily on such offender.

In my view, as the violation was in the nature of plastering and painting and admittedly no major damage was

caused to the schedule property, the orders impugned require some modification.

Thus, the orders impugned are modified to the extent that the petitioner Nos.1 and 2 will attend Mallarpur Police Station, Birbhum, on 17th, 18th and 19th July, 2023 at 11.00 am and shall be detained in the police station till 2.00 pm. They shall be made to sit in the office of the duty officer. The entry and exit of the petitioner Nos.1 and 2 shall be recorded by the Officer-in-Charge or any duty officer of the said police station, by obtaining their signature. The petitioner No.3 being a lady shall not be required to attend the police station, but on the same days, she will appear before the learned trial court through her learned Advocate and wait in the courtroom from 11.00 am to 2.00 pm.

The Officer-in-Charge, Mallarpur Police Station, shall file a report of the compliance of this order by the petitioner Nos.1 and 2, before the learned trial court.

The petitioners shall pay a cost of Rs.500/- to the Calcutta High Court Bar Association Lawyers' Benevolent Fund, within a week from date.

The revisional application is, thus, disposed of.

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

(Shampa Sarkar, J.)