

27.09.2023
Sl. No.4(DL)
srm

C.O. No. 1442 of 2023

Sk. Tasaddak Hosain

Versus

Sk. Iftekar Hossain & Ors.

Mr. Debasish Roy,
Mr. Debnath Mahata

...for the Petitioner.

Mr. Rabindranath Mahato,
Mr. Aritra Shankar Ray

...for the Opposite Parties.

The revisional application arises out of an order dated February 7, 2023 passed by the learned Civil Judge (Senior Division), 3rd Court at Paschim Medinipur, in Title Suit No.299 of 2020.

By the order impugned, the learned court below rejected an application dated September 23, 2022 filed by the plaintiff/petitioner, praying for *status quo ante* in respect of a shop room till disposal of the suit. Further directions were also sought for, preventing the defendant No.1 in the suit from continuing with the use of the said shop room.

According to the petitioner by taking advantage of an order dated May 2, 2022, under the garb of repair, major re-

construction had been made in respect of the shop room. The petitioner claims to be a co-sharer of the said shop room.

During the continuation of such alleged re-construction, the petitioner approached this Court by filing a civil revisional application. The revisional application being C.O. No.1223 of 2022 was disposed of by a learned co-ordinate Bench, granting liberty to the petitioner to apply for local investigation of the alleged shop room in order to bring on record the exact state of the shop room and also to ascertain whether the repairing work was continuing. The learned co-ordinate Bench also recorded that the order would not prevent the petitioner from approaching the appropriate forum, alleging violation of the ad interim order of injunction.

The learned Advocate-Commissioner was appointed. The commission was held. The learned Commissioner filed a report before the learned court below, which indicates that substantial changes had been made to the shop room during such repair. Asbestos shed had been replaced by tin shed, floors had been changed, wooden doors had been changed, and replaced. The details of the learned Commissioner's report are available at pages 66 to 71 of this revisional application. It also appears that the alleged re-construction/repair was over before the commission was held.

Thus, the only remedy now available to the petitioner is to approach the appropriate forum alleging violation of the ad interim order of injunction. *Status quo ante* at this stage, would not be possible as in that case the roof would have to be replaced by the damaged asbestos roof. The floor and the doors cannot be changed to its original position. In any event, all such repairs/re-constructions are without prejudice to the rights and contentions of the parties in the partition suit. The defendant No.1/opposite party No.1 cannot claim any equity in respect of the said shop room or the re-construction done. He has done so at his own risk and the additions, alterations etc. are all subject to the final decree.

The petitioner is at liberty to take appropriate steps in accordance with law and also all such issues, at the final hearing of the suit.

As the Commissioner's report is already on record, this Court is also of the view that identity of the shop room will not be a problem.

It is made clear that as this is a partition suit and parties are co-sharers, each and every co-sharer has a right over every inch of the property. Thus, egress and ingress of the petitioner in respect of the suit property shall not be restricted or

disturbed in anyway by the opposite parties or their men and agents.

The revisional application is, thus, disposed of.

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.)