

10.08.2023  
Item No.5(DL)  
srm

**C.O. No. 1609 of 2023**

**Hasibul Islam @ Babu @ Hasibul Hoque**

**Versus**

**Abdul Hakim & Ors.**

Mr. Biswaroop Bhattacharya,  
Mr. P.S. Debbarman,  
Mr. Prosenjit Mukherjee,  
Mr. Golam Mohiuddin,  
Ms. Puja Mondal

...for the Petitioner.

Mr. Rudranil De,  
Mr. Meheboob Ahmed

...for the Opposite Party Nos.1 to 4.

Having perused the report filed by the learned Civil Judge (Senior Division), 2<sup>nd</sup> Court at Rampurhat, Birbhum, this Court accepts his unconditional apology and records that the order which was passed by the learned Judge dated July 26, 2023, was a product of an erroneous understanding of the order of this Court.

Thus, the order dated July 26, 2023 and all subsequent orders and actions are set aside.

The facts of the case are that during the pendency of a partition suit between the parties, the petitioner filed an application under Section 151 of the Code of Civil Procedure before the learned (Senior Division), 2<sup>nd</sup> Court at Rampurhat,

Birbhum, with a prayer to complete the construction of an incomplete house.

It appears from the Commissioner's report dated December 16, 2022, that an incomplete house, upto the roof level had been constructed by the petitioner consisting of three rooms and one varandah. The roof was incomplete. Iron rods, frames and scaffolding was found. The fact that the construction was up to the lintel level, is available from the report. The learned court below rejected the said application for completion of the roof casting with reasons.

Aggrieved by such order, the petitioner has approached this Court.

Mr. De, learned Advocate for the opposite parties/plaintiffs submits that the petitioner was using more than his share of the property and he could not be allowed to complete the unfinished structure and use the same, during the pendency of the suit. Any order in his favour would amount to rendering the order of injunction as nugatory. Moreover, the order allowing roof casting would only amount to a sanction of the court in respect of the extra land the petitioner was occupying.

Having considered the commissioner's report and the fact that before the ad interim injunction had been passed the

construction up to the lintel level was already complete, this Court is of the opinion that the roof casting should be allowed to protect the property. No further construction in respect of the property in question shall be allowed save and except the roof casting.

The petitioner shall not claim any equity in respect of such construction and the construction shall be subject to the final decision in the suit.

The revisional application is, thus, disposed of.

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.)**