

Item No. 39
12.06.2023
Court. No. 19
GB

C.O. 1640 of 2023

Smt. Sipra Dutta
Vs.
Sri Birendra Kumar Dutta & Ors.

Mr. Sundar Gopal Bhattacharyya

...for the Petitioner.

The revisional application is directed against an order dated April 13, 2023 passed by the learend Additional District Judge, Fast Track 4th Court at Alipore, District – 24 Parganas (South) in Miscellaneous Appeal No.303 of 2019 arising out of order dated July 19, 2019 passed by the learned Civil Judge (Senior Division), 5th Court at Alipore in Title Suit No.913 of 2019.

The petitioner is the daughter-in-law of opposite party no.1, and wife of the proforma opposite party no.3, Uttam Kumar Dutta. The petitioner filed the Title Suit No.913 of 2019 before the learned Civil Judge (Senior Division), 5th Court at Alipore for declaration and permanent injunction. The said suit was filed as the father-in-law was allegedly trying to oust the petitioner from the property in question and develop the same. The husband of the petitioner was living outside Kolkata. The petitioner allegedly suffered a lot of torture at the hands of the in-laws. Prayer was made for a declaration that the petitioner was the daughter-in-law of the defendant no.1 and defendant no.2 and a lawful tenant. Prayer was further made for restraining the defendants in the suit from ousting the petitioner or disturbing the free ingress

and egress of the petitioner in respect of the schedule B property.

As per the plaint, the schedule B property has two rooms in the western side of the ground floor of premises no.D/9, Rajdanga Nabapally East Calcutta Township. The ad interim prayer for injunction was refused by the learned trial judge, inter alia, on the ground that the relief of the petitioner would be to seek protection under the Domestic Violence Act. The court did not find any, prima facie, case in favour of the plaintiff and refused to pass an ad interim order.

Aggrieved, the petitioner filed Misc. Appeal No.303 of 2019 before the learned District Judge at Alipore. Initially, the petitioner's possession was protected by an ad interim order. However, the learned lower appellate court found that the petitioner had obtained the ad interim order on the basis of suppression of material facts and refused to continue the interim order passed by restraining the defendants from dispossessing the petitioner. The Misc Appeal was dismissed.

The learned lower appellate court found that from the pleadings made under Order 39, Rule 4 of the Code of Civil Procedure filed by the defendants, that the petitioner was dispossessed from the property at the instance of the in-laws who had filed an ejectment suit and had obtained possession in an execution proceeding after the suit was decreed. Such fact was suppressed by the petitioner in the present suit. Moreover, from the records transmitted from the court of the learned trial judge, the fact that the petitioner was

evicted from the first floor of the suit property and the possession was taken over by the father-in-law/plaintiff was available.

Title Suit No.913 of 2019 was subsequently filed with a case made out that the petitioner was in possession of the ground floor and the defendants were trying to evict the petitioner. Upon finding that all the material facts with regard to the earlier suit, decree of eviction and taking over possession of the first floor had been suppressed in the second suit, the learned lower appellate court refused to extend the ad-interim order. Those facts were brought on record by the defendants by an application under Order 39, Rule 4 of the Code of Civil Procedure. The court found that the petitioner had resorted to clever drafting to create an illusion with regard to the cause of action. The case of the petitioner was found to be weak and ad interim order of protection which was given to the petitioner was recalled. Rather, the learned lower appellate court come to a finding that in the absence of, prima facie, case the refusal to pass an ad interim order of injunction should be upheld. Accordingly, Misc. Appeal No.303 of 2019 was dismissed.

When both the learned courts below upon a finding of fact had come to the conclusion that the petitioner did not have a prima facie case to seek any protection in respect of the property in question and specially when the facts with regard to ousting of the petitioner from the property in question in execution of an eviction decree have been suppressed, this Court does not find any reason to interfere

with the above findings. Moreover, the plaint does not disclose how the petitioner came in possession of the ground floor after having been evicted once from the suit property. The factum of payment of rent has also not been supported by any valid receipt.

The Apex Court in ***Sopan Sukhdeo Sable and Others vs. Assistant Charity Commissioner and Others*** reported in **(2004) 3 SCC 137** held that omission of a single material fact leads to an incomplete cause of action and the statement or plaint becomes bad.

In ***Shri K. Jayaram and Ors. vs. Bangalore Development Authority and Ors.*** decided in ***Civil Appeal No. 7550-7553 of 2021***, The Hon'ble Apex Court held as follows:-

“16. It is necessary for us to state here that in order to check multiplicity of proceedings pertaining to the same subject-matter and more importantly to stop the menace of soliciting inconsistent orders through different judicial forums by suppressing material facts either by remaining silent or by making misleading statements in the pleadings in order to escape the liability of making a false statement, we are of the view that the parties have to disclose the details of all legal proceedings and litigations either past or present concerning any part of the subject-matter of dispute which is within their knowledge. In case, according to the parties to the dispute, no legal proceedings or court litigations

was or is pending, they have to mandatorily state so in their pleadings in order to resolve the dispute between the parties in accordance with law.

17. In the instant case, since the appellants have not disclosed the filing of the suit and its dismissal and also the dismissal of the appeal against the judgment of the civil court, the appellants have to be non-suited on the ground of suppression of material facts. They have not come to the court with clean hands and they have also abused the process of law. Therefore, they are not entitled for the extraordinary, equitable and discretionary relief.”

The Hon’ble Apex Court in ***Prestige Lights Ltd. V. State Bank of India*** reported in **(2007) 8 SCC 449** has held that a prerogative remedy is not available as a matter of course. In exercising extraordinary power, a writ court would indeed bear in mind the conduct of the party which is invoking such jurisdiction. If the applicant does not disclose full facts or suppresses relevant materials or is otherwise guilty of misleading the court, the court may dismiss the action without adjudicating the matter. It was held thus:

“33. It is thus clear that though the appellant Company had approached the High Court under Article 226 of the Constitution, it had not candidly stated all the facts to the Court. The High Court is exercising discretionary and extraordinary jurisdiction under Article 226 of the Constitution. Over and above, a court of law is also a court of equity. It is, therefore, of utmost necessity that when a party approaches a High Court, he must place all the facts before the Court without any reservation. If there is suppression of material facts on the part of the applicant or twisted facts have been placed before the Court, the writ court may refuse to entertain the petition and dismiss it without entering into merits of the matter.”

The same principle shall apply to the Misc Appeal, which was dismissed.

In the matter of *K.D. Sharma v. Steel Authority of India Limited and Others* reported in (2008) 12 SCC 481, The Hon'ble Apex Court held as follows:-

“35. The underlying object has been succinctly stated by Scrutton, L.J. in the leading case of *R. v. Kensington Income Tax Commrs.* reported in (1917) 1 KB 486, in the following words: (KB p. 514)

“... it has been for many years the rule of the court, and one which it is of the greatest importance to maintain, that when an applicant comes to the court to obtain relief on an ex parte statement he should make a full and fair disclosure of all the material facts—it says facts, not law. He must not misstate the law if he can help it—the court is supposed to know the law. But it knows nothing about the facts, and the applicant must state fully and fairly the facts; and the penalty by which the court enforces that obligation is that if it finds out that the facts have not been fully and fairly stated to it, the court will set aside any action which it has taken on the faith of the imperfect statement.”

The learned trial judge is directed to dispose of the application for temporary injunction within three months from date of communication of this order and pass necessary orders as the court may deem fit and proper. The petitioner's right to claim for residence in the alleged matrimonial home under the Domestic Violence Act remains open.

The decision of Hon'ble Apex Court in the matter of **Prabha Tyagi versus Kamlesh Devi** reported in **AIR 2022 Supreme Court 2331** comes to aid of the petitioner to the extent that the petitioner has a right to proceed before the appropriate forum seeking an accommodation in the matrimonial house which, if applied for, shall be dealt with in accordance with law and independently. This order shall

not prejudice any relief that may be claimed by the petitioner under the Domestic Violence Act.

Accordingly, the revisional application is disposed of.

However, there will be no order as to costs.

Urgent photostat certified copy of this order, if applied for, be given to the parties on priority basis.

(Shampa Sarkar, J.)