

21.06.2023
Court No. 19
Item no.18
CP

C.O. 1666 of 2023

Smt. Barnali Sarkar
Vs.
Arijit Ojha @ Raju & ors.

Mr. Jewel Chanda
Ms. Jiya Bose
Mr. Somnath Basu

....for the petitioner.

Mr. Indranath Mukherjee
Mr. Pradip Kr. Neogi
Mr. A. Saha
Mr. Achintya Kr. Biswas
Mr. A. Dutta

.....for the opposite party no. 3.

Affidavit of service is taken on record.

Despite service, none appears on behalf of the
opposite party nos. 1 and 2.

Mr. Mukherjee, learned advocate appearing on
behalf of the opposite party no. 3, submits that
Purnima Raha is not a party to the proceeding and
the deceased predecessor of Purnima Raha had been
impleaded as a defendant no. 1 in the suit. It is
submitted that after coming to know of the death of
late Bimal Majumder who had died prior to the
institution of the suit, the plaintiff ought to have
added the heirs of the deceased as parties to the suit.
Having failed to do so, neither can the suit proceed
against the said heirs nor is this revisional

application maintainable against the opposite party no. 3 who happens to be the daughter of the deceased. Accordingly, the orders passed in this revisional application shall not apply to the opposite party no. 3.

It has been alleged that the other defendants came to the suit property along with Purnima Raha and claimed ownership in respect of the property. The petitioner filed a complaint before the Officer-in-Charge, Panchasayar Police Station dated March 24, 2023, alleging violation of the order of injunction. The petitioner prayed for grant of police help for implementation of the order passed by invoking Section 151 of the Code of Civil Procedure. The learned court below rejected such application on the ground that in view of the provisions of Order 39 Rule 2A of the Code of Civil Procedure, an application for police help did not have any legs to stand. The prayer of the petitioner was not allowed and the application was rejected.

Upon perusing the ad interim order of injunction, it appears that the learned court below found, prima facie, possession and title of the plaintiff and, thereafter, passed the order of ad interim injunction. If there was an allegation of violation of the said order against any of the defendants, apart from the defendant no. 1 who

expired long before the suit was filed, the learned court below ought to have entertained the application under Section 151 of the Code of Civil Procedure.

The provision of Order 39 Rule 2A is punitive. How a person found guilty of disobedience of an order of injunction should be dealt with, has been provided for. On the other hand, prayer for police help by invoking the inherent power of the court is a matter of public policy and the courts are bound to ensure that the orders passed, are implemented. It is the primary duty of the court to see that its orders are obeyed. If a court has the power to grant an ad interim injunction, the court has ample power to ensure its compliance and enforcement with the help of police. The inherent power of the court cannot be limited by the other provisions of the code of civil procedure. Such power can be exercised to prevent abuse of the process of court and to meet the ends of justice.

The Court's power to grant police help in aid of implementation of the injunction order, be it ad-interim or temporary, has been recognized by this Hon'ble Court in a series of decisions which are as follows:

(a) Saudamini Roychowdhury –vs-
Satyendra Nath Sarkar, reported in 1985
CWN, Page 958;

(b) Sunil Kumar Halder & Ors. – vs – Nishikanta Bhandari & Ors., reported in AIR 1983 Calcutta, Page 266;

(c) Charubala Dev Nath – vs – Niranjan Patnaik, reported in 1993(2) CLT, Pg. 449 and

(d) Paresh Chandra Das – vs – Bikash Kumar Das & Ors., reported in 2010 (2) CLJ, Page 110.

Thus, following the above decisions, this Court holds that it is the duty of the Court to see that its order of injunction is properly implemented and if it is found that there is reasonable threat from the side of the defendant of committing any mischief in violation of the order of injunction, then the Court should pass necessary directions upon the police authority to render assistance to the parties in whose favour the injunction was granted, so that the order of injunction is strictly implemented.

Order XXXIX Rule 2A of the Code postulates consequences of disobedience or breach of injunction. Be it noted that there is no provision in the Code to direct police assistance for enforcement or implementation of an order of temporary injunction. However, Section 151 of the Code saves inherent powers to a civil court. It is under this provision of law that Court is vested with the power to direct the police to provide necessary help in case of disobedience or breach of

its order passed under Order XXXIX Rules 1 & 2 of the Code.

In the decision of ***Sri Paresh Chandra Das vs. Sri Bikash Kumar Das and Ors.*** reported in ***2010 (2) CLJ (Cal) 110*** this court held that since admittedly the interim order of injunction was still in operation, the trial judge ought to have allowed the plaintiff's prayer for grant of police help for implementation of order of injunction.

Thus, the provisions of Order 39 Rule 2A would not bar any application under Section 151 of the Code of Civil Procedure with prayers for police help.

The order impugned dated April 19, 2023, is set aside to the extent of disallowing the application under Section 151 of the Code of Civil Procedure. The other parts of the order are not interfered with.

This order shall not apply in case of any of the persons who claim through Bimal Majumder.

The Officer-in-Charge, Panchasayar Police Station is directed to ensure that the ad interim order of injunction passed by the learned court below is implemented in its letter and spirit against the defendant nos. 2 and 3 and ensure that the plaintiffs are not disturbed directly or indirectly by anyone.

The revisional application is accordingly disposed of.

There shall be no order as to costs.

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

(Shampa Sarkar, J.)