

September 4, 2023
Sl. No.17
Court No.19
s.biswas

CO 1779 of 2023

Subrata Chatterjee and others

vs.

Bidhan Singha Roy and others

Mr. Soumava Mukherjee

Mr. S. Nayek

... for the petitioners

This revisional application arises out of an order dated March 23, 2023, passed by the learned Civil Judge (Senior Division), Chandernagore, in Title Suit No.397 of 2019.

The learned court below refused to pass an order of demolition on the application under Section 151 of the Code of Civil Procedure. The application was allowed in a modified form and the police authorities were directed to ensure that the ad interim order of injunction was implemented.

By the said application a direction upon the Officer-in-Charge, Haripal Police Station was sought for implementation the ad interim order, by restoring the status quo ante upon demolition of the construction allegedly raised by the defendants.

The application, irrespective of the nomenclature, is a refusal to pass a mandatory direction. It is an appealable order.

The court held that the allegation of violation of ad interim order could not be proved and the court

could not be persuaded to exercise its discretion by granting such an extraordinary relief.

The court observed that the prayer was in the nature of mandatory direction and in the absence of special circumstances, the same could not be granted. The commissioner's report was considered and the court found that there was no clear cut proof of construction being raised by the opposite party. Construction materials were not found and the commissioner was unsure as to the age of the boundary wall, although the same appeared to be newly constructed.

The court fixed the application for local inspection filed by the defendants for hearing. The ad interim order was extended.

The learned advocate for the petitioner submits that the court below failed to consider the order passed by this court in WPA 949 of 2022, directing the police authorities to maintain a vigil in order to ensure that the order of the civil court was maintained in its true spirit. That the court failed to consider the commissioner's report and erred in holding that the direction for demolition should be refused as the prayer was not made at the appropriate stage.

In my opinion, having gone through the contents of the application under Section 151 of the

Code of Civil Procedure, it appears that the application was one seeking mandatory injunction and status quo ante upon demolition of the structure raised by the defendants. The prayer in the said application was as follows:

“Under the aforesaid circumstances your Honour will be pleased enough to direct the Officer in Charge of Haripal Police Station to take immediate steps for implementation of the order of ad-interim temporary injunction passed by This Court vide Order no.2 dated 07.08.2019 in the form of restoration of status quo ante by demolishing the construction made after passing of the order of injunction and to pass such other order or orders as your Honour may deem fit and proper, and for such act of kindness the plaintiff as in duty bound shall ever pray.”

The revisional application is thus dismissed.

Interference under Article 227 of the Constitution by the High Court is very limited. The alternative remedy of appeal would not be a bar if the order impugned was passed without jurisdiction or contrary to law or without consideration of the materials on record. The order impugned is well-reasoned and based on materials on record. The correctness of the same is beyond the scope of adjudication of this court as the proper remedy would be to file a Misc Appeal.

As prayers indicate that the application was for a mandatory injunction, irrespective of the nomenclature, the proper remedy would be to prefer an appeal.

In the decision of ***Subhankar Kundu vs Municipal Returning Officer & Ors.*** reported in 2015 SCC Online Cal 7177, the Hon'ble Division Bench of this High Court held as follows:-

“45. If we consider the present problem from that angle, we have no reason to differ from the findings of the learned District Judge in this regard, but at the same time, we cannot be unmindful of the settled position of law to the effect that an application cannot be decided by looking at the nomenclature and/or caption under which such application was filed; rather the substance of the application should be considered for rendering substantial justice to the litigants without looking at the caption under which it was filed.”

Liberty to take back the certified copy upon furnishing a photo copy thereof.

All the parties are directed to act on the basis of the server copy of the order.

Urgent photostat certified copies of this order, if applied for, be made available to the parties upon compliance with the requisite formalities.

(Shampa Sarkar, J.)