

S/L 19
18.4.2023
Court No.652
SD

CO 1979 of 2021

Sri Bishnu Biswas
Vs.
Sk. Sharfuddin & Ors.

Mr. Manas Kumar Barman

...for the Petitioner.

Mr. Anindya Lahiri
Mr. Samrat Dey Paul

...for the Opposite Party No.3.

Being aggrieved and dissatisfied with the order dated March 30, 2021 passed in Title Suit No.28 of 2013 by the learned Civil Judge (Junior Division), Bidhannagar, North 24 Parganas, present application under Article 227 of the Constitution of India has been preferred.

By the impugned order, the court below was pleased to reject plaintiff's prayer under Order VI Rule 17 of the Code of Civil Procedure.

Petitioner contended that the petitioner as plaintiff filed the aforesaid suit against defendant/respondent no.1 for declaration and permanent injunction. By an order dated February 4, 2013 the court below was pleased to pass an injunction order restraining the opposite parties from transferring the suit property to any third party.

It is alleged that the defendant prayed for time on several occasions to file their written statement and written objection but they did not care to take any step in the said suit and for which the suit was fixed for ex parte hearing. Subsequently, on 02.12.2015 plaintiff/petitioner filed application under Order XXXIX Rule 7 and Order XXXIX

Rule 2A of the Code. Local inspection commission was held and from the commissioner's report it transpires that in spite of restraining order dated 04.02.2013 the suit property has been transferred/sold to third party by the defendant no.1 in gross violation of the injunction order. In view of the aforesaid subsequent event pendente lite which took place during pendency of the suit plaintiff wanted to incorporate the same by filing application for amendment under Order VI Rule 17 of the Code of Civil Procedure. Learned court below after hearing both the parties was pleased to pass the impugned order by which the court below rejected the prayer for amendment made by the plaintiffs.

Learned counsel appearing on behalf of the petitioner/plaintiff submits that the rejection order is highly prejudicial and was passed mechanically without applying judicial mind. The impugned order is passed on surmise and conjecture, without any reality and the court below has dealt with the petition negligently and in a lackadaisical way and passed aforesaid baseless and illusory order. Accordingly, he has prayed for setting aside the order impugned.

Learned counsel appearing on behalf of the opposite party no.3 submits that the court below was justified in rejecting the prayer for amendment as plaintiff wanted to incorporate certain prayer which are inconsistent with his original pleading and accordingly, he submits that the order impugned does not call for any interference.

Considered the submissions made by both the parties and also perused the order impugned.

From the cryptic order, it appears that the court below was pleased to reject amendment application on the ground that if it is allowed, it will cause prejudice to the defendant and it will change the nature and character of the suit. Learned court below has not discussed as to how the proposed amendment if allowed, will be prejudicial to the defendant nor it has assigned reason as to how the proposed amendment if allowed, will change the nature and character of the suit.

If the court fails to record the reasons, then non-recording of such reasons goes to the very root of the matter making the order itself not sustainable in the eye of law. It is now well-settled in our judicial discipline that any order passed by a court should ordinarily be supported by the reasons because the reasons express the thought process of the court which weighed with the court to pass such order. In a word an order without reason is practically a body without soul.

Considering the fact that the order impugned is cryptic and is not supported by reason, the court below is directed to hear the application under Order VI Rule 17 of the Code afresh and to pass order afresh without being influenced by any part of the order passed herein.

The order impugned dated March 30, 2021 is hereby set aside.

Accordingly, CO 1979 of 2021 is allowed.

There will be no order as to costs.

Urgent photostat certified copy of this order, if applied for, be given to the parties upon compliance of all necessary formalities.

(Ajoy Kumar Mukherjee, J.)