

07.08.2023
Sl. No.3(ML)
srm

C.O. No. 2667 of 2023
Mr. Mallika Rano & Anr.
Versus
Sri Asit Kumar Mall & Ors.

Mr. Siva Prasad Ghose

...for the Petitioners.

The petitioners have challenged the orders dated May 12, 2023 and July 13, 2023 passed by the learned Civil Judge (Senior Division), 3rd Court, Barasat, North 24-Parganas, in Title Suit No.839 of 2022.

By the order dated May 12, 2023, the application filed by the plaintiffs under Section 151 of the Code of Civil Procedure, for implementation of the order of injunction was allowed.

The learned court below found that by an order of temporary injunction dated April 3, 2023, the defendants in the suit were restrained from using the 'B' schedule property (garage) for commercial purpose and also further restrained from using the common areas described as schedule 'D' for personal use, till the disposal of the suit. There were allegations that the defendants were attempting to violate the said order.

A prayer was made by the plaintiffs for a direction upon the Inspector-in-Charge of Barrackpore Police Station to implement the order dated April 3, 2023. In the order allowing temporary injunction, the learned court below, upon appreciation of the documents found that garage No.3 which was B schedule property was not to be used for commercial purpose as per the original sale deed of the defendants. The learned court further found that 'D' schedule property was to be used as common area for all the apartment owners and the defendants could not convert the same for their personal use.

The relevant portion of the order is quoted below:

“that defendants are restrained for using 'B' schedule property for commercial or business purpose and further restrained from using the common areas as described in schedule 'D' for their exclusive personal enjoyment and use till disposal of the suit.

However, there is no injunction order against defendants to use 'B' and 'D' schedule property as per the terms and conditions of the deed. None of the occupants of the apartment have right to use the common areas of the apartment building for their exclusive enjoyment.

Fix 31-05-2023 for framing of issues.”

Thus, upon consideration of the prayers made by the plaintiffs and the defendants, the learned court below directed the police authorities to ensure implementation of the order and accordingly, the Inspector-in-Charge, Barrackpore Police Station, was directed to render necessary police help to the plaintiffs for implementation of the order of injunction dated

April 3, 2023 in its letter and spirit. Another application was filed by the plaintiffs alleging that in spite of direction of the court, the police authorities did not take steps. Such application was disposed of by an order dated July 13, 2023. The police authorities were once again directed to comply with the order dated May 12, 2023 and furnish a report before the learned court.

These two orders have been challenged by the defendants on the following grounds:

- (a) That the deed of purchase of the defendants was not appreciated in its correct perspective.
- (b) That the deed indicated that the garage could be used for commercial purpose.
- (c) That proper trade licence had been obtained by the defendants for such commercial use.
- (d) That the police authorities had affixed a signboard to prevent use of the garage for commercial purpose which was causing financial crisis.

Considering the facts recorded by the learned court below in the order dated April 3, 2023, this Court finds that the sale deed of the defendants was considered and it was found that the 'B' schedule property, *i.e.*, garage No.3 was not mentioned in the sale deed to be used for commercial purpose. Moreover, the learned court below found that 'D' schedule

property were common areas for use of all apartment owners and the defendants were not entitled to use the same for their personal purpose.

The application for temporary injunction was disposed of on *prima facie* case, balance of convenience and inconvenience, irreparable loss and injury. On the appreciation of the documents, the learned court found that balance of convenience and inconvenience was in favour of the plaintiffs and the defendants should be restrained from using the 'B' and the 'D' schedule properties as their personal properties and for commercial purpose. The learned court had also observed that the suit property should be used by the defendants strictly in terms of the deed.

There was a specific injunction against the 'B' and 'D' schedule properties which should have been followed by both the defendants until such order was either reversed, set aside or modified.

During the hearing of the application under Section 151 of the Code of Civil Procedure, the learned court below found that the defendants had put a signboard in front of the 'B' schedule property indicating that there was no injunction with regard to the suit property. Having found so, the learned court below was of the view that discretion should be exercised and inherent powers under Section 151 of the Code should be

invoked, not only to protect the property, but also to ensure complete and adequate implementation of the order of the court. Accordingly, directions were issued on the police authorities.

I do not find any illegality in the orders impugned.

The police authorities are bound to ensure that the orders passed by the courts are implemented and followed. This is a matter of public policy. The orders of the court should be strictly adhered to by all parties. Otherwise, the orders will remain an empty formality.

The contention of the Mr. Ghose that the 'B' and 'D' schedule properties were purchased by the defendants, that the deed of sale was not appreciated in its correct perspective and there were other documents to prove commercial use, can only be decided in the misc. appeal which has been preferred by the defendants. Such submission goes to the very merit of the order of injunction. These points shall be open to the defendants to urge in the misc. appeal. This Court does not find any illegality in the orders impugned.

The police authorities shall act and proceed in accordance with law and comply with the direction of the learned trial court, till any other order is passed by the learned lower appellate court. The learned lower appellate court is directed to dispose of the Misc. Appeal No.58 of 2023 along

with pending applications expeditiously and preferably within two months from the next date of hearing, without being influenced by this order on the factual aspects.

The revisional application is, thus, disposed of.

There will be, however, no order as to costs.

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

(Shampa Sarkar, J.)