

04.12.2023
Sl. No.7(DL)
srm

C.O. No. 2960 of 2023
Sri Rajesh Upadhyay & Ors.
Versus
Ratan Lal Gaggar

Mr. Rupak Ghosh,
Mr. Nirmalya Dasgupta,
Mr. Chayan Gupta,
Ms. Surabita Biswas,
Mr. Pourush Bandyopadhyay,
Mr. Shoham Sanyal

...for the Petitioners.

Mr. Aniruddha Mitra,
Mr. Uttiyo Mallick,
Ms. Trini Joarder

...for the Opposite Party.

The revisional application arises out of an order dated August 16, 2023 passed by the learned Civil Judge, VIIIth Bench, City Civil Court at Calcutta, in Misc. Case No.4206 of 2023. The order dated July 12, 2023, passed in Title Suit No.497 of 2021 was not interfered with in review.

Mr. Ghosh, learned Advocate appearing on behalf of the petitioners submits that the learned court below erred in holding that the order under review in the said Misc. Case No.4206 of 2023, did not suffer from any error apparent on the face of record. It was also not a case of discovery of new facts and evidence which the petitioners could not bring to the

notice of the court when the order dated July 12, 2023 had been passed. According to Mr. Ghosh, when the interim order of *status quo* was not subsisting, the order for police help was passed, for implementation of the said order.

Mr. Mitra, learned Advocate appearing on behalf of the opposite party opposes such submissions and contends that the parties were in occupation of the property in question and the order of *status quo* was subsisting. The petitioners could not have restrained the opposite party from using a toilet. Hence, the court had no other alternative, but to direct the police authorities take steps and ensure that the plaintiff in the suit could use the toilet, which was an essential requirement. The plaintiff was admittedly in occupation of the said property in question.

This Court finds that the learned trial judge rightly held that the toilet was a basic necessity and the plaintiff should not be prevented from using the same. Mr. Ghosh, does not deny the fact that the plaintiff is also in occupation of the suit property.

Under such circumstances, this Court directs that the set of keys of the main entrance to the toilet, which has already been given to the plaintiff, shall remain in the plaintiff's custody. The plaintiff shall be entitled to use the said toilet and

also install a commode or replace the existing one with notice to other side in order to ensure that the toilet is hygienic and does not create any unhealthy situation.

As the parties are before this Court and the order passed by this Court must be complied with mandatorily, the question of directing the police to carry out this order does not arise. Thus, the order of the learned court below is modified to the above extent and the direction upon the police is set aside.

The user of the toilet, the replacement of the toilet or any addition or alteration carried out in the toilet, shall not create any equity in favour of the plaintiff in the suit.

The learned court below shall proceed with the hearing of the injunction application and dispose of the same within a period of one month from the date of communication of this order. The learned court below shall proceed independently, without being influenced by any observations made in this revisional application.

The revisional application is, thus, disposed of.

There shall be no order as to costs.

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

(Shampa Sarkar, J.)