

MAT 1506 of 2019
with
IA No. CAN 2 of 2022

(Sri Biswanath Guchait Vs. The State of
West Bengal & Ors.)

Mr. Swapan Kumar Pal
Mr. Dilip Kumar Mandal

..... For the appellant

Mr. Ashim Kumar Ganguly
Ms. Karabi Roy

..... For the State

Mr. Ayan Banerjee
Ms. Debasree Dhamali
Ms. Riya Ghosh

..... For the respondent
nos. 6 to 8, 11, 14, 15

The present appeal has been preferred challenging the order dated 26th September, 2019 passed in a writ petition being W.P. No. 17374 (W) of 2019. The writ petition was preferred seeking necessary direction upon the police authorities to restrain the private respondents from interfering with the petitioner's possession over his plot of land. By the order impugned, the petitioner's prayer was refused and he was directed to pay costs assessed at Rs.10,000/- to the respondent no. 6 and a sum of Rs.1,00,000/- to the West Bengal Legal Services Authority, Kolkata.

Mr. Pal, learned advocate appearing for the writ petitioner/appellant submits that the writ petition was initially heard on 13th September, 2019 when none

appeared on behalf of the private respondents and as such the learned Court requested the officer-in-charge of the local police station to ensure the presence of the respondent no. 6 in Court on the next date. The said order was passed recording the submission made by the learned advocate appearing on behalf of the petitioner that there were no co-sharers in the property concerned being dag no.495.

Mr. Pal submits that in a partition suit filed earlier by the appellant, the land in dag no.495 was erroneously incorporated though no such instruction was given by the appellant to his learned advocate. Such fact was also not within the knowledge of the appellant and as such it was submitted on behalf of the appellant before the learned Single Judge that there were no other co-sharers in the dag no.495.

Ms. Dhamali, learned advocate appearing for the respondent nos. 6, 7, 8, 11, 14 and 15 denies and disputes the contention of the appellant.

Ms. Roy, learned advocate enters appearance on behalf of the State.

It appears that on the basis of an erroneous submission made on behalf of the writ petitioner's learned advocate, the officer-in-charge of the local police station was directed to ensure the presence of the respondent no. 6 and as such we do not find any

infirmity in the direction towards payment of costs assessed at Rs.10,000/- to the respondent no.6.

Mr. Pal has placed before this Court a banker's cheque of Rs.10,000/- issued in the name of the respondent no. 6, namely, Kamala Guchait. The said cheque has been handed over to Ms. Dhamali, learned advocate appearing for the respondent no. 6 in Court today.

Costs are at the discretion of the Court and such power to impose costs is an extraordinary power and is passed in extraordinary circumstances. It appears from the sequence of facts that there was no deliberate intent on the part of the appellant to mislead the Court and as such the direction towards payment of a sum of Rs.1,00,000/- to the West Bengal Legal Services Authority, Kolkata needs to be modified.

This Court, accordingly, directs the appellant to pay a sum of Rs.10,000/- to the Member Secretary State Legal Service Authority.

Mr. Pal has placed before this Court a banker's cheque of Rs.10,000/- issued to the Member Secretary State Legal Service Authority. The appellant shall deposit the said cheque in the office of the Member Secretary State Legal Service Authority within Wednesday, i.e., 17th May, 2023.

The order dated 26th September, 2019 passed in a writ petition being W.P. No. 17374 (W) of 2019 is, accordingly, modified.

With the above directions, the appeal and the connected application are disposed of.

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

All parties shall act on the server copies of this order duly downloaded from the official *website* of this Court.

(Partha Sarathi Chatterjee, J.) (Tapabrata Chakraborty, J.)