

06.12.2023
Court No. 19
Item no.26
CP

C.O. No. 3701 of 2023

Md. Samsuddin

Vs.

Branch Manager, Tata Motors Finance Ltd. & Anr.

Mr. Sukanta Chakraborty

Mr. S.K. Zuber Ahemed

Mr. Anindya Halder

.....for the petitioner.

This court does not find any illegality in the order dated August 23, 2023, passed by the learned Civil Judge (Junior Division), 2nd Court at Serampore, Hooghly, in Title Suit No. 202 of 2023.

By the order impugned, the learned court rejected an application under Section 151 of the Code of Civil Procedure, thereby refusing the prayer of the petitioner to direct the police to restore back the vehicles which, according to the petitioner, had been originally snatched by the financier in violation of the order of injunction.

The learned court observed that during the pendency of an application under Order 39 Rule 2A of the Code of Civil Procedure, no order can be passed for restoration of possession through police.

The learned court recorded the submissions of the defendant that in view of the arbitration clause and the pendency of the application under Section 5

and 8 of the Arbitration and Conciliation Act, 1996, such order should not be passed.

In my opinion, the allegation of the petitioner about snatching away of the vehicle is a matter of evidence. Thus, until the disposal of the application under Order 39 Rule 2A of the Code of Civil Procedure and a factual finding that there was violation of the order of ad interim injunction by way of forceful removal of the vehicles, no order as prayed for, can be passed.

The revisional application is dismissed.

This decision will not preclude the learned court below from proceeding with the hearing of the application filed by the defendant and the application under Order 39 Rule 2A of the Code of Civil Procedure, strictly in accordance with law and as the learned court deems fit and proper.

There shall be no order as to costs.

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

(Shampa Sarkar, J.)