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23.11.2023

C.O. No. 4027 of 2023

**Sukalyan Halder & Anr.
Vs.
Prosenjit Tarafdar**

Mr. Bikram Banerjee,
Ms. Sagarika Goswami,
Ms. Shalini Ghosh ... For the petitioners.

Ms. Anyasha Das ... For the Opposite Party.

Affidavit-of-service filed on behalf of the petitioners be kept with the record.

The revisional application under Article 227 of the Constitution of India is at the instance of the defendants in a suit for declaration and injunction and is directed against the judgment and order dated September 25, 2023 passed by the learned Additional District Judge, Fast Track- 4th Court Barasat, District. 24-Parganas(North) in Miscellaneous Appeal No. 60 of 2023 thereby affirming the order dated April 05, 2023 passed by learned Civil Judge (Junior Division) Bidhannagar, District. 24-Parganas(North) in Title Suit No. 107 of 2023.

The plaintiff/opposite party in the suit, inter alia, has prayed for a decree of declaration that the notice of termination dated June 24, 2022 and November 15, 2022 are illegal, null and void as such, liable to be cancelled.

The plaintiff in the suit has filed an application under Order XXXIX Rules 1 and 2 of the Code of Civil Procedure for an order of temporary injunction restraining the defendants, its men, agents and servants from dispossessing the plaintiff from the property

described under the schedule appended to the plaint (the “suit property” in short).

The learned Trial Judge by the order dated April 05, 2023 passed an ad interim order of injunction on the said application, the defendants aggrieved thereby preferred the connected miscellaneous appeal, the appeal Court below by the order impugned has affirmed the order of the learned Trial Judge.

Mr. Bikram Banerjee, learned advocate for the petitioners submits that the defendant no. 2 is an educational society and is running a chain of private schools in the State of West Bengal. St. Stephen’s School, Rajarhat is one of such schools in which the plaintiff was working as the gatekeeper. The defendant no. 2, due to various reasons, closed the Rajarhat campus of the school and transferred all of its employees to other branches.

The plaintiff refused to join in the campus where he was transferred. The authority of the Society, for such disobedience, by the impugned notice dated June 24, 2022 has terminated the service of the plaintiff. The suit property being the guard room of the Rajarhat campus of the school, the plaintiff has no exclusive right to occupy the said room. Mr. Banerjee further submits that the plaintiff has also challenged the impugned notices before the Labour Court.

Ms. Anyasha Das, learned advocate for the plaintiff/opposite party on the other hand submits that the plaintiff, in the year 2005 was appointed as the watchman of the society and was promoted to the post of residential caretaker, as such he cannot be evicted from the suit property without due process of law.

Heard learned advocate for the parties, perused the materials-on-record.

The plaintiff is claiming that termination of his service is illegal, to have an order of injunction in respect of the suit property, he has to establish a nexus between the said property and the terms of his employment inasmuch as proof of the said fact is necessary to qualify the requirements for grant of an order of injunction.

Both the courts below, while granting an ad interim order of injunction on the said application for injunction did not consider the said aspect of the matter, besides the order of the learned Trial Judge is vitiated for not being supported by any reason. The order impugned dated September 25, 2023, therefore is set aside, in consequence, the order of learned Trial Judge dated April 05, 2023 is also set aside.

The learned Trial Judge is requested to dispose of the application for injunction and the pending application under Order VII Rule 11 of the Code as expeditiously as possible in accordance with law. The defendants are directed to file the written objection to the said application for injunction within a period of two weeks from date.

Certified copy of the order of the learned Trial Judge filed by Mr. Banerjee be kept with the record.

C.O. 4027 of 2023 is thus allowed without any order as to costs.

Urgent Photostat certified copy of this order, if applied for, be supplied to the parties subject to compliance with all requisite formalities.

(Biswajit Basu, J.)