

Item No. 10  
05.10.2023  
Court. No. 19  
GB

C.O. 3860 of 2022

Syed Nafisa Bibi & Ors.  
Vs.  
Syed Bobi Bibi & Ors.

*Mr. Sharanyo Chatterjee,  
Mr. Pinank Kumar Mitra,  
Ms. Subhamita Ghosh*

*... for the Petitioners.*

*Mr. Debajyoti Basu,  
Mr. S.M. Hassan,  
Ms. Anupama Yasmin,  
Mr. Diptomoy Talukder*

*... for the Opposite Parties.*

The revisional application arises out of an order dated November 23, 2022 passed by the learned Civil Judge (Senior Division), 1<sup>st</sup> Court at Medinipur Sadar in Title Suit No.394 of 2016.

By the order impugned, an application under Section 151 of the Code of Civil Procedure was disposed of directing the defendants to restore possession of the suit property which was already in possession of the plaintiff nos.2(a) and 2(b) before the suit was filed. If the defendants failed to comply with the order, the plaintiff nos.2(a) and 2(b) were given liberty to approach the local police authorities for relief and the local police authorities were directed to ensure compliance.

Challenging the aforementioned order, the learned advocate for the petitioners submits as follows:-

- a) That the order impugned does not record any evidence on the basis of which the learned court

below could pass an order of such mandatory nature.

- b) The application under Section 151 of the Code could not be entertained as the appropriate remedy of the plaintiffs would be to file an appropriate application praying for mandatory injunction/directions.
- c) Without going into evidence, such order of restoration of possession could not be passed.
- d) The order was passed ex parte.

Mr. Basu, learned advocate appearing on behalf of the opposite parties submits that the suit proceeded ex parte. The order impugned was also passed ex parte. The petitioners have already filed an application for setting aside the ex parte orders. Thus, this revisional application is not maintainable.

The learned court had passed a mandatory order directing restoration of possession in favour of the plaintiff nos.2(a) and 2(b) who were allegedly dispossessed during the pendency of the injunction application. The order is in the nature of a mandatory injunction despite the nomenclature of the application filed by the petitioners. The prayers and the pleadings in the application indicate that the said application was in the nature of an order of mandatory injunction for restoration of possession of the properties in favour of the plaintiff nos.2(a) and 2(b).

In my opinion, having gone through the contents of the application under Section 151 of the Code of Civil

Procedure, it appears that the application was one seeking mandatory injunction and status quo ante by restoration of possession. Nomenclature of the application is not relevant consideration but the nature of the pleadings and the prayers are indicative that this was an application for mandatory injunction. Reference is made to the decision of ***Sukhendu Maity vs Abhinaba Prakashan & Ors.*** reported in ***(2005) 3 CHN 1 and Subhankar Kundu vs. Municipal Returning Officer and Ors.*** reported in ***(2016) 1 Cal LJ 261.***

As prayers indicate that the application was for a mandatory injunction, irrespective of the nomenclature, the proper remedy would be to prefer an appeal.

In the decision of ***Subhankar Kundu vs Municipal Returning Officer & Ors.*** reported in ***2015 SCC Online Cal 7177***, the Hon'ble Division Bench of this High Court held as follows:-

**“45.** If we consider the present problem from that angle, we have no reason to differ from the findings of the learned District Judge in this regard, but at the same time, we cannot be unmindful of the settled position of law to the effect that an application cannot be decided by looking at the nomenclature and/or caption under which such application was filed; rather the substance of the application should be considered for rendering substantial justice to the litigants without looking at the caption under which it was filed.”

Under such circumstances, the revisional application is disposed of as the same is not maintainable.

Liberty is granted to the petitioners to approach the appropriate forum in accordance with law as the order of

mandatory injunction passed by the learned court below is an appealable order. Liberty is also granted to take back the certified copy of the order impugned, upon furnishing a photocopy thereof. If such misc. appeal is filed, the same shall be disposed of in accordance with law and expeditiously.

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

**(Shampa Sarkar, J.)**