

**IN THE HIGH COURT AT CALCUTTA
CIRCUIT BENCH AT JALPAIGURI
APPELLATE JURISDICTION**

C.R.R. 258 OF 2022

**Sri Girija Barman & Anr.
Vs.
The State of West Bengal & Ors.**

Before: The Hon'ble Justice Apurba Sinha Ray

For the Petitioners : Mr. Tapas Bhattacharyya, Adv.
 Mr. Sukanta Sarkar, Adv.
 Mr. Bikash Singha, Adv.

For the Opposite Party No. : Mr. Subhasish Misra, Adv.
2 Mr. Partha Bhowmick, Adv.

For the State : Mr. A.S. Chakraborty, Adv.
 Mr. Aniruddha Biswas, Adv.
 Mr. Arjun Chowdhury, Adv.

Judgment On : 13.12.2023

Apurba Sinha Ray, J. :-

1. The instant revisional application has been filed by one Girija Barman against the order dated 17.09.2022 passed by the Learned Additional Sessions Judge, Tufanganj, Coochbehar, in connection with Criminal Revision No. 12 of 2022 whereby the Learned Additional Sessions Judge affirmed the order dated 22.06.2022 passed by the Executive Magistrate, Tufanganj, in MR Case No. 86 of 2019.

2. This is a trite law that in its revisional jurisdiction the High Court cannot entertain an order passed in a revisional application by a Learned Sessions Judge or Additional Sessions Judge against the original order. In this case it appears that the order dated 22.06.2022 of the Executive Magistrate has been challenged in the Criminal Revision Application being No. 12 of 2022 before the Learned Additional Sessions Judge, Tufanganj, Coochbehar, under Section 397/399/400 of Cr.P.C. and the said revisional application has been disposed of by the said revisional court by order dated 17.09.2022. The validity of the order dated 17.09.2022 passed in a revisional application under Sections 397/399/400 of Cr.P.C. cannot be again challenged by way of filing a revisional application under Section 401 of the Cr.P.C. before the Hon'ble High Court. Therefore, for ends of justice, the instant revisional application be construed as an application under Article 227 of the Constitution of India by virtue of the inherent power of this Court.

3. The backdrop of the instant case is that the order dated 22.06.2022 was passed by the Executive Magistrate, Tufanganj, Coochbehar, in MR Case No. 86 of 2019 whereby the concerned Magistrate dealing with an application under Sections 145/107 of Cr.P.C. filed by the respondent no. 2 herein, has come to the conclusion that the petitioner Himangshu Paul, the respondent no. 2 herein has been forcibly and wrongfully dispossessed from the land in question within two months next before the date of filing of the case under Section 145/107 of Cr.P.C. and as such the concerned Magistrate directed that the possession of the land in question be restored to the respondent no. 2 herein until he is evicted in due course of law. Accordingly, the BL&LRO Tufanganj-II, Boxirhat was directed to restore possession of the land in question to the respondent no. 2 herein after taking all necessary help from the police. Be it mentioned that in spite of notice the opposite party in the said proceeding under Sections 145/107 of Cr.P.C., that is, the appellant herein, remained absent during the hearing of the matter. The said order was passed on 22.06.2022 and the same was challenged by the present appellant by filing revisional application under Sections 397/399/400 of Cr.P.C. before the Learned Additional District and Sessions Judge, Tufanganj, Coochbehar and after hearing the parties the impugned order dated 17.09.2022 was passed.

4. Learned Senior Counsel Mr. Tapas Bhattacharyya has submitted that the original order dated 22.06.2022 was passed by the Executive Magistrate Tufanganj, Coochbehar in the back of the present appellant. The Magistrate

did not consider that a civil suit is pending between the parties and therefore the Magistrate should not have ordered for restoration of possession in favour of the respondent no. 2 herein. Learned Counsel has further submitted that the Learned Additional District and Sessions Judge, Tufanganj, Coochbehar has failed to consider the case of the appellant. In fact the Learned Judge did not take pain to consider the factual basis of the case and he passed the order dated 17.09.2022 merely on the ground that as the appellant did not appear before the concerned Magistrate during hearing of the application under Section 145/107 of Cr.P.C. she has forfeited her right to address the Learned Court of Additional District and Sessions Judge, Tufanganj, Coochbehar regarding the legality and validity of the order dated 22.06.2022 passed by the Executive Magistrate, Tufanganj, Coochbehar. According to the learned counsel, the Learned Additional District and Sessions Judge, Tufanganj, Coochbehar did not assign any valid reason for affirming the order dated 22.06.2022.

5. Learned Counsel Mr. Subhasish Misra for the respondent no. 2 submits that there are sufficient documentary evidences as well as materials on record which suggest that the respondent was all along in the possession of the property but as he was dispossessed of the same, he submitted an application under 145/107 of Cr.P.C. before the Learned Court of Executive Magistrate, Tufanganj, Coochbehar and after due enquiry, the order for restoration was passed and that has been executed. The respondent no.2 is in the possession of the property in question at present and there are

sufficient materials wherefrom it appears that appellant was given ample opportunity to place her case but as she chose not to appear before the Learned Magistrate, the Learned Magistrate passed the order dated 22.06.2022 and the Learned Additional District and Sessions Judge, Tufanganj, Coochbehar has rightly passed the impugned order dated 17.09.2022 taking into consideration that the appellant herein intentionally avoided the course of law.

6. The learned Advocate for the State Mr. Aniruddha Biswas has submitted that he has left the matter to the discretion of this Court. However, he points out that the Learned Additional District and Sessions Judge, Tufanganj, Coochbehar has not taken care of any other materials in the relevant record apart from the fact that in spite of opportunities, the appellant remained absent during hearing of the case. The Learned Judge did not go into the merits of the order dated 22.06.2022, which is not a correct way to dispose of an application under Section 397/399/400 of Cr.P.C.

Court's View

7. It appears that the issues raised by the appellant before the Revisional Court at Tufanganj, Coochbehar are, inter alia, that the lawyer of the respondent No. 2 did not inform the appellant about the next date of hearing of the said proceeding and as such the second party could not file any written objection before the Executive Magistrate and further by order dated

20.04.2022 the Learned Executive Magistrate directed the BL&LRO to submit a clear report stating the date from which the respondent (the petitioner of the said MR Case No. 86 of 2019) was dispossessed from his land in question and also directed to mention how much quantum of land from which the respondent was disposed of, which show that the Magistrate proceeded with the case in a predetermined manner.

8. It appears from the impugned order dated 17.09.2022 that the Learned Additional District and Sessions Judge Tufanganj, Coochbehar did not choose to consider all the issues raised by the appellant in the said Revisional Application being No. 12 of 2022 and the Learned Judge had confined his decision within a sole and solitary ground that as the appellant, the opposite party in the proceeding before the Learned Executive Magistrate, decided to remain absent on several dates of hearing she is not entitled under law to agitate other issues before the revisional forum. The brief observation of the Learned Additional District and Sessions Judge, Tufanganj, Coochbehar in the Criminal Revisional No. 12 of 2022 may be quoted as hereunder:-

“DECISION WITH REASONS :

This Revisional Application is preferred against the Order dated-22.06.2022 by the Opposite Party of MR. Case No. 86/2019 passed by the Ld. Executive Magistrate of Tufanganj.

The Opposite Party had been found to be very scrupulous so far as he filed this Revisional Application in spite being absent in the Court of the Ld. Executive Magistrate since 18.12.2021.

Let us first record his dates of absence. He was absent on 18.12.2021, 28.03.2022, 20.04.2022, 17.05.2022. 30.05.2022 and on the day of the Order i.e., 22.06.2022 which is assailed in this Revision. The O.P of that case thinks that he will be absent during the hearings before that Court perpetually and when an Order goes against him, he will come to this Court in a Revision. This Court will hear nothing from such a scrupulous person.

The Opposite Party, here the Revisionist Petitioner, did not choose to contest the case in MR. Case No. 86/2019 and without contesting the same there, straight away came to this Court in Revision challenging the Order dated-22.06.2022 as if, that Court can be avoided at will and whenever any Order goes against him, he will come this Court challenging the order passed by that Court as if, that Court is untouchable to him. This attitude cannot be allowed to be perpetrated by him and assisted by this Court by passing an Order in his favour. Such O.P is not Equity and Indian Courts being Courts of Equity, such Equity cannot be extended to a litigant who is not bonafide in his actions. Therefore, this Revisional Application is liable to be dismissed.

Hence, it is hereby

ORDERED

that the present Revisional Application is dismissed on contest. The impugned Order dated-22.06.2022 passed by the Ld. Executive Magistrate of Tufanganj in MR Case No. 86/2019 is hereby affirmed.

Let the copy of the Judgment and L.C.R be sent to the Ld. Executive Magistrate of Tufanganj.”

9. From the above observation of the Learned Sessions Judge it appears that the points raised by the appellant were not at all considered by the Learned Judge for the reasons best known to him. It is the duty of the

learned Judge to consider the relevant points of facts and law which are raised by the learned Counsels of the parties in the course of hearing. Without dealing with such factual and legal issues involved in the relevant matter, the Learned Judge has passed the impugned order dated 17.09.2022 in a slipshod manner, which is not desirable from a Judge holding the Chair of an Additional District and Sessions Judge.

10. Therefore, I find merits in the submission of the learned counsel of the appellant that the contentions of the appellant were not duly considered by the Learned Additional Sessions Judge and thereby grave error has been done in justicing the cause of the present appellant.

11. For the sake of justice, it would be better to ask the concerned court of Learned Additional District and Sessions Judge Tufanganj, Coochbehar to pass a reasoned order afresh on the revisional application being No. 12 of 2022 filed by the present appellant before the said court after hearing the parties and to pass appropriate order/orders covering all points of factual and legal aspects raised by the learned counsel of the parties in a time bound manner. The instant application which has been converted to an application under Article 227 of the Constitution of India is thus allowed.

12. Hence

ORDERED

that the instant application under Article 227 of the Constitution of India is allowed on contest. The impugned order dated 17.09.2022 passed

by the Learned Additional District and Sessions Judge Tufanganj, Coochbehar in connection with Criminal Revisional Application being No. 12 of 2022 is hereby set aside. The revisional application being No. 12 of 2022 of the Learned Additional District and Sessions Judge Tufanganj, Coochbehar is hereby restored to its file. The Learned Court of Additional District and Sessions Judge Tufanganj, Coochbehar is directed to pass appropriate order afresh on the said criminal revisional application being No. 12 of 2022 after hearing all the concerned parties within two months from the date of receipt of this order, without being influenced by any of the observations made in this judgment. The present possession of the respondent no. 2 over the land in question shall be subject to the decision of the criminal revisional application being No. 12 of 2022. Let a copy of this judgment be sent to the Learned Court of Additional District and Sessions Judge Tufanganj, Coochbehar for information and necessary action.

Registry is to comply.

13. Urgent certified website copies of this judgment, if applied for, be supplied to the parties subject to compliance with all the requisite formalities.

(APURBA SINHA RAY, J.)