

29.04.2024
Ct. No. 19
Sl. No.71
Cp

C.O. No. 175 of 2024

Sri Arjun Saha @ Arjun Shaw & ors.
Vs.
Sri Jogesh Sharma

Mr. Subhabrata Chowdhury
Ms. Tripti Pandey
Mr. Biswajit Goswami
Ms. Rishita Ghosh

... for the Petitioners.

Mr. Sujit Bhunia

...for the Opposite Party.

1. Irrespective of the nomenclature of the application filed by the opposite party as one under Section 151 of the Code of Civil Procedure, this court has no hesitation to hold that the same is an application for an interim mandatory order. A prayer for restoration of the property in favour of the plaintiff on the allegation of subsequent dispossession, with police help has been allowed. Such application was fixed for hearing on September 15, 2023.
2. It appears that a copy was also served. Date was fixed in presence of the learned advocates for both the parties. However, no written objection to the said application was filed by the petitioners. On the day the application was fixed for hearing, none appeared on behalf of the petitioners. The learned court, upon perusal of the order of the Executive Magistrate and a judgment of the High Court reported in AIR 1986 Calcutta 220, held that the

application should be allowed and directed the defendants to restore possession of the property to the plaintiff. The IC, Kotwali Police Station was directed to implement the order and to ensure the plaintiff's possession.

3. The learned advocate for the petitioners submits that the order was passed ex parte and without any reasons.
4. The learned advocate for the plaintiff opposite party submits that an ad interim order of injunction was passed restraining the defendants from dispossessing the opposite party. The opposite party approached the police authority as also the learned Executive Magistrate. The opposite party was not entertained by the police. Hence, finding no other alternative, the application before the learned court was filed on May 15, 2023.
5. In my view, there is nothing on record to show that the learned Executive Magistrate had taken note of any subsequent dispossession. The learned Executive Magistrate passed an order directing the police authority to ensure no breach of peace took place. In the order of ad interim injunction, the learned trial court recorded that the plaintiff had a prima facie case to go to trial as rents had been paid. There is nothing on record to show that any Misc. Appeal had been preferred from the said ad interim order. Yet, the law is well-settled. An interim order in the nature of mandatory injunction for

restoration of possession of a property cannot be passed in a casual manner and on the mere asking. The court was required to be satisfied with regard to the possession and the subsequent dispossession. The method and manner in which such dispossession was accomplished at the instance of the defendants ought to have been gone into. The decision could not be passed without evidence.

6. Under such circumstances, the order impugned is set aside.
7. The objection to the said application shall be filed by the petitioners within two weeks from date. The learned court is directed to hear the application for restoration of possession afresh, upon allowing the parties to adduce oral and documentary evidence. However, there is nothing on record to show that the defendants had been diligent in opposing the application on the date fixed. Thus, cost of Rs.2000/- shall be paid to the plaintiff within two weeks from date. Upon the court being satisfied that the cost had been paid, the application under Section 151 of the Code along with the written objection shall be heard and disposed of.
8. The revisional application is accordingly disposed of.

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

(Shampa Sarkar, J.)