

March 5, 2024
Sl. No.8
Court No.19
s.biswas

CO 1191 of 2023

Tuktuki Samanta

vs.

Tamalika Ghosh and another

Mr. Probal Mukherjee, Sr. Adv.

Mr. Suhrid Sur

... for the petitioner

Mr. Souvick Mitra

... for the opposite parties

Without going into the merits of the submissions of the parties, this court is of the view that the learned court must revisit the application filed by the petitioner/plaintiff including the point of maintainability of the said application for restoration of possession.

By the application under Section 151 of the Code of Civil Procedure, the petitioner prayed for restoration of the possession. According to the petitioner, she was dispossessed after the ad interim order of injunction was passed.

Learned advocate for the opposite parties denies such contentions and submits that the opposite party no.1 was in possession when the ad interim order was passed.

This court finds that the learned Civil Judge (Junior Division) at Bidhannagar, by the order dated March 14, 2023 passed in Title Suit No.15 of 2022 rejected the application, inter alia, holding that the application was liable to be rejected as there were no

cogent documents, which would indicate that the plaintiff had been dispossessed.

In my view, the consideration of the contention of the plaintiff and the documents which were already on record, should have been taken into consideration.

Under such circumstances, the parties should have been allowed to adduce evidence. Instead of undertaking the aforementioned exercise, a dismissal without any reasons is erroneous.

Under such circumstances, the learned court is directed to rehear the application filed by the plaintiff on all points and the objection raised by the defendant/opposite party no.1 and arrive at a conclusion, upon allowing the parties to adduce oral evidence. The documents which are already on record, shall be considered.

The revision application is disposed of accordingly.

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

Urgent Photostat certified copies of this order, if applied for, be made available to the parties upon compliance with the requisite formalities.

(Shampa Sarkar, J.)