

M/L 37
11.12.2024
Sb/sk
Ct 5

IN THE HIGH COURT AT CALCUTTA
CIVIL REVISIONAL JURISDICTION

CO 1234 of 2024

Sekh Belal & Ors.
Versus
Sulekha Rani Das @ Sulekha Das

Mr. Sambhunath De
Mr. Barun Kanti Samanta
... For the petitioner.

1. Challenging the Order No.7 dated 2nd March, 2024 passed by the Civil Judge, (Junior Division) Chanchal, Malda, in T.S. 186 of 2023, whereby the plaintiff/opposite party's application under Section 151 of the Code of Civil Procedure 1908 (in short the Code), for implementation of the ad interim order of injunction by police help was allowed, the instant revisional application has been filed.
2. Records would reveal that the plaintiff/opposite party upon filing of a suit for injunction which was registered as case no. T. S.186 of 2023 had moved an application seeking ex parte ad interim order of injunction. By order no.2 dated 19th December, 2023, the learned Trial Court considering the prima facie case made out by the plaintiff/opposite party that the plaintiff/opposite party is in possession of the suit property and the urgency involved, non-grant of *ex parte* ad interim temporary injunction would likely defeat the object of granting temporary

injunction by the delay, had by the aforesaid order restrained the defendants/petitioners from disturbing the peaceful possession of the plaintiff with respect to the suit property in any manner till 4th January, 2024. The opposite party/plaintiff was directed to comply with the provisions of Order XXXIX Rule 3(a) and (b) of the Code.

3. On the following date in compliance with the Order No.2 dated 19th December, 2023 the plaintiff filed postal receipt along with process fee for the purpose of issuing of notice to show cause.
4. The petitioners claim to have contested the said injunction application by filing written statement. Records would further reveal that on an application under Section 151 of the Code being filed by the plaintiff/opposite party for the purpose of implementation of the order of ad interim injunction by police help, the learned Court by taking note of the objection raised by the defendants/petitioners was, *inter alia*, pleased to allow the said application for police help by order dated 2nd March, 2024.
5. Challenging the aforesaid, the instant revisional application has been filed.
6. Mr. De, learned advocate appearing in support of the instant revisional application would submit that

the plaintiff without affording the ordinary remedy available in Order XXXIX Rule 2A of the Code has filed an application under Section 151 of the Code seeking police help for implementation of the order of ad interim injunction. He would submit that when a specific provision is available in the Code, no application under Section 151 of the Code could have been filed. This aspect has been overlooked by the learned Judge. Independent of the above, he would submit that the petitioners are in possession of the property and it is on the strength of the order of ad interim injunction that the plaintiff/opposite party is attempting to dispossess the petitioners. According to Mr. De, the plaintiff has admitted the possession of the defendants/petitioners in her complaint dated 9th January, 2024. Having regard thereto, he would submit that the learned Court had erred in allowing the said application.

7. Heard the learned advocate appearing for the petitioners and considered the materials on record. Admittedly, in this case, there is a subsisting order of ad interim injunction. The petitioners are contesting the injunction application. No application for vacating of the ad interim order has yet been filed. Although, Mr. De would submit that the petitioners are in possession and such fact has been

acknowledged by the opposite party in her complaint, I am of the view that such issue cannot be raised before this Court in a challenge to an order for grant of police help for implementation of the order of ad interim injunction, without there being a challenge to the parent order of ad interim injunction, that too for the first time before this Court exercising revisional jurisdiction under Article 227 of the Constitution of India. Since, admittedly there is a subsisting order of ad interim injunction restraining the defendants/petitioners from disturbing peaceful possession of the plaintiff in any manner, I am of the view that there is no impediment for the plaintiff to apply under Section 151 of the Code seeking implementation of the order through police help. Although Mr. De would submit that a specific provision has been provided in the Code, in the form of Order XXXIX Rule 2A, a perusal of such provision would indicate that the same is to afford relief in the form of punishment for disobeying the order of injunction. I find that a Coordinate Bench of this Court in the case of ***Paresh Chandra Das v. Bikash Kumar Das & Ors.*** reported in **(2010) 3 CHN 939 (Cal)** under similar set of facts was of the view that the plaintiff's prayer for grant of police help for implementation of the ad interim order of injunction is maintainable.

Similar view has been taken by another Coordinate Bench of this Court in the case of ***Sunil Kumar Halder and Others v. Nishikanta Bhandari and Others***, reported in **AIR 1983 Cal. 266**. In the said judgment, the Court has drawn a distinction between the steps that can be taken for violation of the order of injunction by way of punishing the defendants and an order for implementation of the order of injunction by police help.

8. Having regard thereto, I do not find any irregularity far less any illegality and/or jurisdictional error in the order impugned.
9. The revisional application, thus, fails and is accordingly dismissed without any order as to costs.

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

(Raja Basu Chowdhury, J.)