

ML110
September
sandip
Ct. 19
18.09.2024

*In The High Court At Calcutta
Civil Revisional Jurisdiction*

C.O. 1828 of 2024

Sri Debranjana Dey & Anr.

Vs.

Smt. Dolly Bose & Anr.

Mr. Suddhsatva Banerjee,
Mr. S. Sanyal,
Mr. Anshunath Chakraborty,
Mr. Gourab Mukhopadhyay ...For the petitioners.

Mr. Gautam Lahiri ... For the opposite parties.

Affidavit-of-service filed on behalf of the petitioners be
kept with the record.

The petitioners of the instant application under Article
227 of the Constitution of India are the plaintiffs of *Title
Suit No. 7322 of 2013*, a suit for injunction and *Title Suit
No. 17 of 2015*, a suit for specific performance for
agreement for sale, which are pending before the 7th Court
of learned Civil Judge, (Senior Division) at Alipore, District
– 24 Parganas (South); the learned Trial Judge is hearing
the said suits analogously.

An appeal being *F.M.A. 765 of 2017* arising out of the
said *Title Suit No. 17 of 2015* had travelled to this Court;
the defendants of the said suit were the appellants; they
took out an application in the said appeal being *CAN 5645
of 2018* seeking permission of the Court to continue with
the construction on the suit property, such permission was
granted vide order dated August 22, 2019 on the following
conditions:-

*“The applicant is permitted to raise further
construction over the suit property strictly
according to sanction building plan on condition*

that she cannot claim any equity over the suit property as a result of such construction and will pull down the entire structure at her own cost if the suit succeeds in future.”

The petitioner had assailed the said order before the Hon’ble Supreme Court in S.L.P. (C) 23296 of 2019 which was dismissed vide order dated October 04, 2019 with the following observations:-

“By the order impugned, the respondent who is apparently the owner of the land in question and has obtained a sanction for construction from the authorities concerned, has been permitted to raise further construction over the suit property strictly according to the sanctioned building plan, on the condition that she shall not claim equity over the suit property as a result of such construction and will pull down the entire structure at her own cost if the suit succeeds. The interest of the petitioners is fully protected.”

The petitioners thereafter took out an application in the said *disposed of* matter; the Hon’ble Supreme Court had disposed of the said application vide order dated February 08, 2021 with the further observations which are quoted below:-

“needless to mention that purchasers, if any, would have to be informed of the order dated October 04, 2019 passed by this Court and will be bound by the aforesaid order in the event suit succeeds, the entire structure will have to be pulled down as directed by the said order dated October 04, 2019”

The petitioners had approached the learned Trial Judge praying that for implementation of the said observation of the Hon’ble Supreme Court, sign boards displaying the pendency of the said suits and the undertaking of the opposite parties be fixed in the suit property.

The learned Trial Judge by the order impugned February 27, 2024 has dismissed the said application.

Mr. Gautam Lahiri, learned advocate for the opposite parties submits that the appeal in which such undertaking of his clients was recorded has already been disposed of, moreover, display board is already there in the suit property; therefore, there is no need for any further direction.

The opposite parties since have been executing the construction work over the suit property with an undertaking, the intending purchasers must be made aware of such undertaking. The order impugned is therefore set aside.

The submission of Mr. Lahiri that the display board displaying such undertaking is already there in the suit property since has been disputed by Mr. Suddhsatva Banerjee, learned advocate for the petitioner; to avoid controversy, it is directed that if such display board have not yet been fixed, same be fixed within a period of **two weeks from date.**

C.O. 1828 of 2024 is disposed of with the above terms without any order as to costs.

Parties to act on the server copy of this order duly downloaded from the official *website* of this Court.

Urgent Photostat certified copy of this order, if applied for, be supplied to the parties subject to compliance with all requisite formalities.

(Biswajit Basu, J.)