

10.4.2024
62
Ct. no. 652
sb

C.O. 2376 of 2018

**Nemai Chandra Mondal & Ors.
Vs.
Rahul Islam Molla & Ors.**

Mr. Haradhan Banerjeefor the Petitioners

Affidavit of service filed by the petitioners is taken on record. Opposite parties are not represented.

The petitioners/decreed holders filed suit against the opposite parties being the members of a particular community, being Title suit no. 198 of 1983 with a prayer for declaration and for permanent injunction. The aforesaid suit is a suit in the nature of representative suit, within the meaning of Order 1 rule 8 of the Code of Civil Procedure. After final hearing, the suit was decreed ex parte as the defendants did not contest the said suit.

The plaintiffs put the said decree in execution being execution case no. 83 of 2017. In the said proceeding, the petitioner filed one application under Section 151 of the code for a direction upon the Officer-in-charge of the local Police Station for protection of possession of the petitioner over the decreetal property. An interim relief was also sought for in connection with the said application but learned court below by the

order impugned, disallowed the said ad interim prayer, made in connection with the said application.

Being aggrieved by that order, Mr. Banerjee, learned counsel appearing for the petitioners submits that the court below has erred in observing that the plaintiffs had not lodged any complaint before the local bodies. In fact, they have informed about the violation of the decree relating to permanent injunction on various occasions before the local bodies as well as before local police station but they did not take any action. Accordingly, he has prayed for setting aside the order impugned and to pass appropriate direction.

I have considered the submissions made on behalf of the petitioner. On perusal of the order impugned, it appears that the prayer was made for an ad interim relief but the court below came to a finding that there is not a single document placed before the court below that any complaint has been lodged before any local bodies or local police station, seeking immediate redress and accordingly, the court below did not find any extreme urgency or prima facie case in favour of plaintiff's ad interim relief.

Having gone through the order impugned, I do not find any perversity or impropriety in the order impugned and as such C.O. 2376 of 2018 is hereby dismissed.

However, the learned court below is directed to dispose of the application filed by the petitioners under Section 151 of the Code, preferably within a period of eight weeks from the date of communication of the order, without being influenced by any observations made herein.

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

(Ajoy Kumar Mukherjee, J.)