

*In The High Court At Calcutta
Civil Revisional Jurisdiction*

C.O. 2365 of 2024

With

I.A. No. CAN 1 of 2024 (not in file)

**Suraksha Diagnostic Center, a partnership firm,
represented by its partner, Pritam Sarkar**

Vs.

Soumya Pal

Mr. Rabindranath Mahata,
Mr. Aritra Shankar Ray ...For the petitioner.

Mr. Sourav Sen,
Mr. Sk. Afrojul Haque ... For the opposite party.

Mr. Mahato, learned advocate for the petitioner files
the certified copy of the order of the learned Trial
Judge, let it be kept with the record.

The instant application under Article 227 of the
Constitution of India is at the instance of the plaintiff
in a suit for declaration of title and injunction.

The said suit being Other Suit No. 202 of 2022 is
pending before the 3rd Court of learned Civil Judge
(Junior Division) at Midnapore, District – Paschim
Midnapore.

The prayer of the plaintiff for an ad interim order of
injunction on an application under Order XXXIX
Rules 1 and 2 of the Code of Civil Procedure was
allowed by the learned Trial Judge vide Order No. 02,
dated September 22, 2022 thereby restraining the
defendant from disturbing the peaceful possession of
the plaintiff over 'A' schedule property and also not to

evict the plaintiff from the said property without adopting due process of law.

The said order was subsisting till it was made absolute by the order dated November 28, 2022.

The petitioner alleging that the defendant has put a padlock in the suit property on November 22, 2022 had filed an application for a direction upon the defendant to break it open.

The learned Trial Judge by the Order No. 19 dated April 12, 2023 had allowed it by directing the defendant to open the said padlock and a further direction was passed directing the Inspector-in-Charge, Kotowali Police Station to provide required assistance to the plaintiff for implementation of the said order.

The defendant aggrieved by the said order had preferred the connected Miscellaneous Appeal No. 80 of 2023.

The learned District Judge, Paschim Medinipore by the order impugned dated May 21, 2024 had allowed the said miscellaneous appeal thereby setting aside the order of the learned Trial Judge.

It appears from the said order that the appeal Court below fell in error in holding that the order of injunction was passed on November 28, 2022 after the date of alleged dispossession of the petitioner, i.e. November 22, 2022, inasmuch as the ad interim order of injunction dated September 22, 2022 was in force

till the application for injunction was finally disposed of vide order dated November 22, 2022 making the said ad interim order of injunction absolute; therefore, it is apparent that the Appeal Court below has set aside the order of the learned Trial Judge on an erroneous appreciation of fact, the order impugned, for the said reason, is set aside.

The Miscellaneous Appeal No. No. 80 of 2023 is remanded to the appeal Court below for a fresh decision in accordance with law.

It is made clear that this Court has not gone into the merits of the said appeal, the parties are at liberty to take any defence available to them under the law.

With the above, C.O. 2365 of 2024 is disposed of.

In view of the disposal of the revisional application, the connected application for expeditious disposal of it being I.A. No. CAN 1 of 2024 has become infructuous and is also disposed of. There shall be no 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.)