

Form No.J(2)

**IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE**

Present :

The Hon'ble The Chief Justice T. S. SIVAGNANAM

A N D

The Hon'ble Justice Hiranmay Bhattacharyya.

MAT 1339 of 2024

ASHIS CHAKRABORTY

VS

STATE OF WEST BENGAL AND ORS.

IA NO: CAN/1/2024, CAN/2/2024

For the Appellant(s) : Mr. Partha Pratim Roy,
Mr. Dyutiman Banerjee,
Mr. Vishal Mallick.

For the State : Mr. Jaladhi Das.

For the Respondent No.6. : Mr. Prasad Bhattacharyya,
Mr. Aritra Kumar Thokdar.

Heard on : 11.07.2024

Judgment on : 11.07.2024

Hiranmay Bhattacharyya, J:

1. The 5th respondent in the writ petition has filed this intra court appeal challenging the orders dated 24th June, 2024 and 26th June, 2024 passed by a learned Single Judge in WPA 2458 of 2023.

2. By the order dated 24th June, 2024 the learned Single Judge directed the appellant to come ready with an affidavit regarding the time within which the appellant would shift to his share indicated in the partition deed. The effect of such order is to direct shifting of the appellant from his present possession to the portion allocated to him by virtue of the partition deed.

3. By the order dated 26th June, 2024 the learned Single Judge directed the police authorities to act in accordance with the direction passed by the learned Judicial Magistrate, 1st Class, 2nd Court, Krishnagar, Nadia on April 18, 2011 in Misc. Case No.119(iv) of 2010. By the said order, the appellant was directed to shift to the place which is earmarked to him through one Umesh Chandra Majumder. It was also indicated that the interim arrangement was made pending disposal of the title suit.

4. The learned Advocate appearing for the appellant submits that the writ court ought not to have directed the appellant to shift from his present possession of the immovable property to a different portion. He, however, submits that the appellant herein has no intention to violate the order of the Judicial Magistrate passed in a proceeding under the Protection of Women from Domestic Violence Act (for short "D.V. Act").

5. The learned Advocate appearing for the private respondent, on instruction, submits that the private respondent is not interested in shifting of the appellant from his present possession as directed by the

learned Single Judge. Such submission is placed on record. He submits that the police authorities did not take steps for implementing the order passed by the authority under the D.V. Act which prompted him to approach the writ court.

6. The learned Advocate representing the State files a report dated July 8, 2024 of the Inspector-in-Charge, Nakashipara Police Station.

7. Heard the learned Advocates for the parties and perused the materials placed.

8. The private respondent herein is claiming right over a particular portion of an immovable property in terms of a partition deed.

9. Such right in respect of the immovable property has been challenged by the appellant herein by filing Title Suit No.66 of 2018 which is pending before the learned Civil Judge (Senior Division), 2nd Court, Krishnagar, Nadia.

10. Record reveals that the learned Civil Judge by an order being No.21 dated February 13, 2020 passed an order directing the plaintiff i.e. the appellant herein and the defendant no.1 i.e. the private respondent herein to maintain the status quo in respect of possession, nature and character of the suit premises as on the date of the passing of the said order till the disposal of the suit or till further orders whichever is earlier.

11. It is not the case of the respondent herein that such order of status quo has been set aside or varied by the learned Trial Court or by a superior forum. When an order of status quo passed by the Civil Court of competent jurisdiction in respect of an immovable property is subsisting, the learned writ court, on an application under Article 226 of the Constitution of India alleging police inaction, could not have directed shifting of the appellant from a specific portion of an immovable property to a different portion. A dispute between the parties in respect of an immovable property is purely civil in nature and when the Civil Court is in seisin over such issue, the writ court ought not to have passed such an order.

12. Therefore, this court is of the considered view that the direction for shifting of the appellant from the portion of the property which is presently in his occupation to a different portion calls for interference.

13. However, taking note of the fact that the appellant has undertaken not to act in violation of the order passed by the learned Judicial Magistrate, 1st Class, 2nd Court, Krishnagar, Nadia on April 18, 2011 in Misc. Case No.119(iv) of 2010, this court is not inclined to interfere with the portion of the order passed by the learned Single Judge directing the police authorities to act in accordance with the said order.

14. For the reasons as aforesaid, the order dated 24th June, 2024 directing filing of affidavit by the appellant herein with regard to

shifting as well as the portion of the order dated 26.6.2024 directing shifting of the appellant from portion presently occupied by him to a different portion in the immovable property stands set aside. The portion of the order dated 26th June, 2024 by which the police authorities were directed to act in accordance with the direction passed by the Judicial Magistrate in the proceeding under DV Act is not interfered with.

15. The appeal accordingly stands allowed in part. Applications also stand disposed of.

16. There shall be no order as to costs.

17. Urgent certified copy of this order, if applied for, be given to the learned advocates for the parties on usual formalities.

(HIRANMAY BHATTACHARYYA, J.)

I agree.

(T. S. SIVAGNANAM)
CHIEF JUSTICE

gd/ssd
Assistant Registrar (Court)