

25 26.02.2024
AN Ct. No. 07

CO 3413 of 2023

Chandra Dayani & ors.
Vs.
Atanu Dinda & ors.

Mr. Ratul Das
Mr. Soham Sanyal

... for the petitioners

The defendants in a suit for eviction have filed this application under Article 227 of the Constitution of India challenging the judgment dated 19.05.2023 passed by the learned Additional District Judge, Fast Track Court-6th, Alipore, South 24 Parganas in Misc. Appeal No. 406 of 2016.

The petitioner filed an application for injunction praying for an order restraining the opposite parties from interfering with the peaceful occupation and enjoyment of the tenanted portion and/or dumping or storing of any hazardous articles or LPG Cylinders in the vicinity of the suit premises and to remove the elevated structure adjacent to the suit tenancy. Learned trial court by an order no. 83 dated 01.08.2016 rejected the said application.

Being aggrieved by and dissatisfied with the order passed, the petitioner has preferred the Misc. Appeal which stood dismissed by the impugned order.

Learned counsel appearing for the petitioner submits that the stacking of LPG Cylinders by the plaintiff/opposite parties herein is causing obstruction to the ingress and egress of the petitioner to the tenanted

premises. He further submits that the opposite party herein is interfering with the electric connection and water connection of the petitioner.

Learned trial Judge noted that it is not the case of the defendant/petitioner herein that the LPG Gas Cylinders have been stacked after induction of the defendant in the suit premises. The learned trial court further noted that the plaintiff is residing in the second floor of the suit property and the defendant is residing in the suit premises in the first floor. The learned Judge of the trial court further noted that the plaintiff is running a restaurant in the ground floor and for running of such business, LPG Cylinders are kept.

The learned Judge of the appeal court below after considering the materials on record including the photographs recorded that the cylinders are kept inside a room far from the staircase. Therefore, the allegation of obstruction to ingress and egress to the tenanted premises is without any basis. With regard to the allegation of illegal construction, the learned appeal court below rightly noted that in a case of illegal construction by the plaintiff/opposite party herein, the petitioner has a right to challenge the same before the appropriate forum. An order of mandatory injunction directing removal of the elevated structure as prayed for by the petitioner cannot be passed without trial on evidence.

Insofar as the relief prayed for on the ground of alleged interference with the electricity and water connection is concerned, this Court finds that no prayer

was made in that regard before the learned trial court in the application for injunction.

For the reasons as aforesaid, this Court is of the considered view that the learned trial court was right in rejecting the Misc. Appeal.

Hence, the instant civil revisional application stands **dismissed**, however, without any order as to costs.

Urgent certified photostat copy of this order, if applied for, shall be given to the parties as expeditiously as possible on compliance of all necessary formalities.

(Hiranmay Bhattacharyya, J.)