

27.02.2024
Sl. No.9(DL)
srm

C.O. No. 3935 of 2023

Sri Dilip Kumar Paul

Versus

Sri Joydeb Kumar Paul

Mr. Debnarayan Bhattacharyya,
Ms. Dipta Bhattacharyya

...for the Petitioner.

1. The revisional application arises out of an order dated March 1, 2023 passed by the learned Civil Judge (Junior Division), 1st Court, Krishnanagar, in Title Suit No.198 of 2022.
2. The order impugned has two parts. The learned Civil Judge (Junior Division), 1st Court at Krishnanagar, accepted the written statement filed by the defendant, which was already on record and vacated the order by which the suit was fixed for *ex parte* hearing. By the second part of the order, the application under Section 151 of the Code of Civil Procedure read with Rule 208 of the Civil Rules and Orders, filed by the plaintiff, was rejected.
3. The plaintiff has challenged the said order on various grounds.

4. According to the plaintiff, the written statement was filed after almost six months from entering appearance in the suit and the learned court ought not to have allowed the defendant to contest the suit by filing written statement. Order VIII Rule 1 of the Code of Civil Procedure, mandates that the written statement should be filed within 120 days from receipt of summons. The learned court was of the view that the explanation given by the defendant as to why the written statement was filed belatedly, was sufficient explanation for the delay caused in filing the written statement. Every party against whom a suit had been filed, is entitled to contest the same.
5. Next, it is contended that the learned court wrongly rejected the application for police help. The plaintiff required the help of police to break open the lock of the room affixed by third parties to whom the premises had been let out.
6. I do not find any reason to interfere with the order of acceptance of the written statement and permitting the defendant to contest the suit. The order vacating the earlier order by which the suit was fixed for *ex*

parte hearing does not also appear to be grossly erroneous. The court has granted a discretionary relief on the facts pleaded by the defendant.

7. With regard to the prayer for police help to break up the lock affixed by the third parties at the instance of the defendant, the learned court found that the plaintiff had failed to prove that the defendant had sublet the property to any other third party. Moreover, there was no order of injunction allowing removal of padlock. Thus, the question of allowing police help to remove the padlock, did not arise. The petitioner/plaintiff stated that he had taken shelter in his younger brother's house, who had started behaving badly and had beaten him up. The petitioner further stated that the defendant let out the property to a third party who had locked the godown. The defendant stated that the property was purchased jointly and they had constructed a tin house measuring more than 5,000 sq.ft. The petitioner had requested the defendant to allow him to run a shop in the defendant's construction. Considering the request of the petitioner, he was allowed to run his business by opening a new shop

room measuring about 12 x 12 sq.ft. The plaintiff/petitioner had filed the suit only to harass the defendant. The defendant was the owner of the property and the plaintiff with some antisocial elements, on the basis of false documents, had tried to enter into the suit property forcefully.

8. On appreciation of the case, and counter-case the court was of the view that the issue of subletting to third party could not be proved and without any mandatory injunction with regard to the breaking up the padlock, police help could not be granted.
9. Under such circumstances, I do not find any reason to interfere with the order impugned.
10. The petitioner has relied on the decision of Sujit Pal vs. Prabir Kumar Sun & Ors. reported in AIR 1986 Cal 220. In my view, the judgment does not appear to have any application in the facts of this case. The said decision is an authority on the principle that even if an application Order XXXIX Rule 2A of the Code of Civil Procedure was pending the said proceeding would not bar a party from filing an application under Section 151 of the Code of Civil Procedure seeking restoration in case of

dispossession from the property, in violation of the order of ad interim injunction.

11. In this case, the plaintiff contended that the godown had been sublet to a third party and locked. It is not the plaintiff's case that he was physically dispossessed from the property. On the other hand, the trial court held that such allegation could not be proved. Under such circumstances, the order impugned is upheld.

12. Accordingly, the revisional application is dismissed.

13. There shall be no order as to costs.

14. Parties are to act on the basis of the server copy of this order.

(Shampa Sarkar, J.)