

Item No. 64
25.01.2024
Court. No. 19
GB

C.O. 4196 of 2023

Ghanshyam Das Harnathka & Ors.
Vs.
Pragati Goel & Ors.

Mr. Habib Hassan

...for the Petitioners.

*Mr. Siddhartha Banerjee,
Mr. Anjan Bhandari,
Ms. Jyoti Routh,
Ms. Anam Zafar*

...for the Opposite Party No.3.

The only reason to interfere with the order impugned is the fact that, an application filed by the petitioners under Section 151 of the Code of Civil Procedure, seeking removal of the learned Engineer Commissioner, was pending. The learned Judge, 5th Bench, City Civil Court at Calcutta had directed the plaintiff to file an objection to the said application and had fixed the said application for hearing.

Without disposal of the said application, the learned court allowed an application for police help which had been filed earlier by the learned Commissioner, to enable the learned Commissioner to complete the commission work.

In my view, the application under Section 151 of the Code of Civil Procedure seeking removal of the learned Commissioner on the grounds stated therein, should have been disposed of first. By the order impugned, the said application has been rendered as infructuous. It was up to the learned court to accept the contentions of the petitioner and the truth, veracity and correctness of the statements therein, while disposing of the said application, but keeping

the application pending and allowing the commission work with police help, was not the proper course of action.

Mr. Banerjee, learned advocate appearing for the plaintiffs submits that the contentions in the application under Section 151 of the Code of Civil Procedure was completely false and contrary to the records. The learned Commissioner had served notice on both parties. The representative of the defendants had tried to assault the Commissioner, for which the Commissioner had already lodged an FIR. Under such circumstances, no indulgence should be shown to the petitioners by entertaining a frivolous application.

Be that as it may, this Court is not concerned with the correctness of the contentions of the petitioners in the application seeking removal of the learned Engineer Commissioner and appointment of another Commissioner. It was for the learned court below to decide as to whether such application should be allowed or not.

The apprehension of Mr. Banerjee can be put to rest, with the following directions:-

- a) The order impugned is stayed till disposal of the application under Section 151 of the Code of Civil Procedure.
- b) The learned court shall dispose of the application under Section 151 of the Code of Civil Procedure on its own merits and upon hearing the parties, on the next date fixed or so soon thereafter as the

business of the court shall permit, but not later than a week therefrom.

- c) In case the said application is allowed and another learned Engineer Commissioner is appointed by the learned court at the cost of the plaintiffs, the order impugned shall stand recalled. The court shall also direct the Officer-in-Charge, Park Street Police Station to render all assistance to the said learned Commissioner at the cost of the plaintiffs.
- d) If the learned court does not allow the said application, the order dated October 18, 2023 shall automatically revive.

It is made clear that in either case, the commission work should be completed within a month from the disposal of the application under Section 151 of the Code of Civil Procedure.

The time limit fixed by this Court shall be treated as peremptory.

Accordingly, the revisional application is disposed of.

All the parties are directed to act on the basis of the server copy of this order.

(Shampa Sarkar, J.)