

ML 49
05.03.2024
Court. No. 19
GB

C.O.3916 of 2022

Sri Shyamal Kumar Ghosh & Anr.
VS
Sanghamitra Shah & Anr.

Mr. Shamit Sanyal,
Mr. Sabyasachi Roy,
Ms. Priyankshi Banerjee

...for the Petitioners.

1. By an order dated November 15, 2022, passed by the learned Civil Judge (Junior Division), Bidhannagar in Title Suit No.213 of 2020, the learned court rejected an application under Section 151 of the Code of Civil Procedure filed by the petitioners for implementation of an order dated March 30, 2021. By the order dated March 30, 2021, the learned court directed that both the parties would have access to the water reservoir in the ground floor.
2. The learned advocate for the petitioners submits that the learned court did not appreciate the objection to the application filed by the plaintiff. The learned advocate for the petitioners referred to various portions of the written objections filed by the plaintiff to support his contention that the objections were frivolous and indicated an indirect admission of the allegations of the defendant.
3. It appears that the learned court rejected the said application on three grounds: -

- a) An earlier application for implementation of the order with the help of police dated August 10, 2021, was disposed of as not pressed.
 - b) Without cogent evidence with regard to the denial of access and blockage of access to the said water reservoir by the plaintiff, the issue could not be decided.
 - c) The issue had to be decided on evidence.
4. It appears that the learned court had also directed hearing of an application under Order 39 Rule 7 of the Code of Civil Procedure.
5. Under such circumstances, this Court is of the view that the learned court did not act illegally or with material irregularity in passing the order impugned. An application under Order 39 Rule 7 of the Code of Civil Procedure has been filed by the petitioners for local inspection, to ascertain whether the access had been denied or not. Upon hearing of such application and on the outcome thereof, the learned court shall form an opinion with regard to the allegations and then the petitioners may renew their prayer, if the report goes in their favour. Till then, and till the decision is arrived at upon disposal of the application under Order 39 Rule 7 of the Code of Civil Procedure, the prayer seems premature. This order shall not be construed as an opinion either on the merits of the

petitioners' allegations or on the merits of the pending proceedings.

6. Accordingly, the revisional application is disposed of.
7. However, there will be no order as to costs.
8. All the parties are directed to act on the basis of the server copy of this order.

(Shampa Sarkar, J.)