

ML 55
02.04.2024
Court. No. 19
GB

C.O. 4441 of 2023

Manoj Adhikary
Vs.
Anisur Rahaman & Ors.

*Mr. Uttiya Ray,
Mr. Arnab Mandal*

...for the Petitioner.

1. The revisional application arises out of an order dated October 4, 2023, passed by the learned Civil Judge (Junior Division), 2nd Court at Burdwan at Purba Bardhaman.
2. An application under Section 151 of the Code of Civil Procedure was rejected. The said application was filed in connection with Title Suit No.668 of 2022. By the application, the tenant prayed for a direction upon the I.C., Burdwan Sadar Police Station to provide assistance for restoration of possession to the petitioner in a super structure which should be reconstructed by the defendant within 15 days from the date of the order.
3. According to the petitioner, during the subsistence of the order of temporary injunction the defendant had forcibly dispossessed the petitioner by demolishing a super structure over a tenanted shop room at the dead of the night.
4. The learned court rejected the said application on the following grounds:-

- a) A local inspection was held in respect of the scheduled property and it was observed that there was no existence of any shop room over the suit property.
 - b) Without any evidence as to whether there was at all any shop room or not, the prayer in the application under Section 151 of the Code of Civil Procedure, could not be allowed.
 - c) There was nothing on record which would show the date, time and the manner in which the alleged dispossession took place.
 - d) Mandatory injunction could be granted, only if the dispossession could be proved with material evidence. Direction upon the landlord for construction of a super structure also could not be allowed by invoking inherent power under Section 151 of the Code of Civil Procedure.
5. No such super structure had been referred to earlier. The claim of the petitioner was not only dispossession but also a direction upon the defendant to reconstruct a super structure over a shop room, which did not find any mention in the records or in the report of local inspection.
6. Under such circumstances, I do not find any illegality or perversity in the order impugned. The learned court had rightly appreciated the facts and held that when the existence of a super structure was not available

from the records more so, when the existence of a shop room in the suit property was not available in the report of the local inspection, no such mandatory directions could be passed in an application under Section 151 of the Code of Civil Procedure.

7. With regard to the prayer for violation of the order of injunction, the petitioner is entitled to proceed with the other remedy available in law.
8. Accordingly, the revisional application is disposed of.
9. However, there will be no order as to costs.
9. All the parties are directed to act on the basis of the server copy of this order.

(Shampa Sarkar, J.)