

09.05.2024
01 JPJ
Court No.18
AJ.

**In the High Court at Calcutta
Circuit Bench at Jalpaiguri
Civil Revisional Jurisdiction**

C.O. 11 of 2023

**Shri Jagdish Prasad & Ors.
-Vs-
Shri Arun Kumar Gupta & Ors.**

Mr. Partha Pratim Roy,
Mr. Kushal Chatterjee,
Mr. Oishik Chatterjee.
.....for the petitioners.

Mr. Aniruddha Chatterjee,
Mr. Debasish Mukhopadhyay,
Ms. Jenia Rudra.
.....for the opposite party
nos.1 & 2.

Mr. B.P. Subba.
.....for the Darjeeling
Municipality.

The instant revisional application under Article 227 of the Constitution of India is at the instance of the plaintiffs in a suit for declaration and is directed against part of the Order No.16 dated November 19, 2022 whereby the application of the defendants under Section 151 of the Code of Civil Procedure was allowed and the Order No.20 dated December 20, 2022 passed by the learned Civil Judge (Senior Division) at Darjeeling in the said suit being O.C. Suit No. 16 of 2022.

The learned Trial Judge by the Order No.07 dated July 29, 2022 had disposed of an application for injunction filed by the plaintiffs under Order XXXIX Rules 1 and 2 read with Section 151 of the Code directing the parties to maintain status quo as regards to the nature, character, possession and alienation of the suit property till the disposal of the suit.

The defendants/opposite parties, on September 28, 2022 had filed an application under Section 151 of the Code praying police assistance to enforce the order of injunction.

The learned Trial Judge, by the part of the order no. 16 dated November 19, 2022 has disposed of the said application by directing the Inspector-in-Charge, Darjeeling Sadar to take necessary steps to open the suit shop-room and to restore the possession of it as it was on September 27, 2022, in compliance with the said direction, the police authority has handed over the keys of the said shop-room to the defendants.

The plaintiffs, on November 23, 2022, also filed an application under Section 151 of the Code for handing over the keys of the said shop-room to them.

The learned Trial Judge, by the Order No.20 dated December 20, 2022, has rejected the said application.

Mr. Partha Pratim Roy, learned advocate for the petitioners submits that the plaintiffs are the heirs of one of the admitted licensees of the suit shop room and the defendants are their agents engaged to look after the said business but the defendants, creating a cloud over the title of the plaintiffs and by taking advantage of the erroneous orders, have taken possession of the said suit shop room which needs to be immediately restored in favour of the plaintiffs.

Mr. Anirudha Chatterjee, learned advocate for the defendants/opposite parties, on the other hand submits that the defendants have the right to be in the suit shop room being the successors-in-interest of one of the admitted licensees. There are evidences galore on record that the plaintiffs were never in possession of the suit shop room and neither had control over the business, on the contrary the defendants all along, are in possession of the said suit shop room.

Heard the learned advocate for the parties, perused the materials-on-record.

The grant or refusal of a prayer for injunction determines the fate of a civil suit, therefore, due care and caution should be bestowed by the Court while dealing with such an application [*See MARIA MARGARIDA SEQUERIA FERNANDES AND ORS. vs. ERASMO JACK DE SEQUERIA (DEAD) THROUGH LRS.* reported in **AIR 2012(SC) 1727**]

In the instant case, the learned Trial Judge did not follow the said basic principle in disposing the application for injunction. It is astonishing to note that the learned Trial Judge in spite of holding that “*this court cannot come to any conclusion at this stage without holding any trial who is in actual possession*” had disposed of the application for injunction vide order dated July 29, 2022 directing the parties to maintain status quo as regards nature, character, possession and alienation of the suit property as on the said date till the disposal of the suit.

The said order has bred all the subsequent problems inasmuch as the parties engaged themselves in scuffles to establish their possession over the suit shop room so that such possession can be protected by taking advantage of such type of order of injunction.

The application of the defendants under Section 151 of the Code to have the police assistance to enforce the said order of injunction dated July 29, 2022, was disposed of by the learned Trial Judge by another peculiar order dated November 16, 2022 by directing the Police authorities to restore the possession of the suit shop room to the party who was in possession of it as on the date of disposal of the said application for injunction. The said direction of learned Trial Judge is ripe with serious jurisdictional error.

In this backdrop, rejection of the application of the plaintiffs for possession of the suit shop room vide order dated December 20, 2022 is also not justified.

The orders impugned, therefore, are set aside.

Both the applications under Section 151 of the Code filed by the defendants and plaintiffs respectively are required to be re-considered.

The learned Trial Judge is requested to decide the said applications afresh, strictly on the basis of the materials already on record as expeditiously as possible, preferably within a period of four weeks from the date of communication of this order and in doing so, shall not grant unnecessary adjournment to either of the parties.

The learned Trial Judge, depending upon the outcome of the said exercise, shall pass necessary orders for possession in respect of the suit shop room.

C.O.11 of 2023 is disposed of with the above terms without any order as to costs.

The records be sent down to the Circuit Bench at Jalpaiguri immediately.

Urgent Photostat certified copies of this order, if applied for, be supplied to the parties upon compliance with all requisite formalities.

(Biswajit Basu, J.)