

CO 466 of 2025

Manish Kumar Sharma
vs.
Sri Upendranath Banerjee & Ors.

Mr. Abhrajit Mitra, Ld. Sr. Adv.
Mr. Satadeep Bhattacharyya
Mr. Samriddha Sen
Mr. A.K. Roy
Mr. Arijeet Bera
...for the petitioner

This application under Article 227 of the Constitution of India is at the instance of the first defendant and is directed against an order dated 1st February, 2025 passed by the learned Civil Judge (Junior Division), 1st Court at Alipore in Title Suit No. 663 of 2018.

The opposite party No. 1 herein filed Title Suit No. 663 of 2018 praying for declaration of his title and permanent injunction and for other consequential reliefs. On an application under Order 39 Rule 1 & 2 being moved by the opposite party herein, the learned Civil Judge (Junior Division), 1st Court at Alipore passed an *ad interim* order of injunction restraining the defendant No. 1/petitioner herein from creating any disturbance in the peaceful possession of the opposite party no. 1 herein in respect of the suit premises for a limited period. It is not in dispute that the *ad interim* order of injunction passed by the learned Trial Judge by order dated 4th May, 2018 is in subsistence.

Alleging violation of the *ad interim* order of injunction, the opposite party herein filed an application under Section 151 of the Code of Civil Procedure praying for implementation of the *ad interim* order through police help.

The learned Trial Judge by an order dated 27th January, 2020 allowed the application under Section 151 of the Code thereby directing the Officer-in-Charge of Anandapur Police Station to ensure proper implementation of the order of temporary injunction passed by the learned Trial Judge on 4th May, 2018 if the opposite party approaches the police authority.

The petitioner herein preferred a civil revision application being CO 572 of 2021 challenging the aforesaid order dated January 27, 2020 and the Co-ordinate Bench passed an order dated 9th March, 2021 by directing that the police shall have no authority to interfere with the construction on the premises No. 761 at Madhurdaha but the order of police help shall be restricted to ensure that the suit property is not encroached upon by the defendant No. 1 or his men and agents in any manner. The Co-ordinate Bench expressed a *prima facie* view that there would be no occasion for the police to interfere with the construction, save and except, if it is

found that the construction in any way interfered with the plaintiff's possession of the suit property.

After going through the said order, this Court finds that the Co-ordinate Bench was of the view that the police authority was to see that the construction shall in no way interfere with the plaintiff's/opposite party No. 1 herein enjoyment of the suit property.

Mr. Mitra, learned senior advocate representing the petitioner submits that without an application being filed, the learned Trial Judge passed an order directing the Officer-in-Charge, Anandapur police station to report stating the present status of implementation of the order of Court for *ad interim* temporary injunction which was passed vide order dated 4th May, 2018. Though there may not be any application being filed by the opposite party No. 1 herein, but the fact remains that when an order of injunction is subsisting in respect of a property which is the subject matter of a title suit, the police authority is duty bound to implement such order. It is not in dispute that the learned Trial Judge by an order dated 27th January, 2020 passed an order directing implementation of the *ad interim* order of injunction by police help and the Co-ordinate Bench clarified that the police shall not interfere

with the construction, save and except if it is found that the construction has in any way interfered with the plaintiff's enjoyment of the suit property. The learned Trial Judge who is *in seisin* over the matter, cannot be faulted for directing the Officer-in-charge Anandapur police station to report stating the present status of the implementation of the order of injunction as the Court has to see that its order is being implemented.

Mr. Mitra, learned senior advocate submits that the petitioner is carrying on construction in respect of premises No. 761, Madhurdaha. It is, however, made clear that while making such construction the petitioner cannot interfere or create any disturbance in the peaceful possession of the plaintiff's/opposite party No. 1 herein in respect of the property which has been specifically described in the schedule of Title Suit No. 663 of 2018.

With the above observations, CO 446 of 2025 stands disposed of.

It is however made clear that the Court has not gone into the merits of the application under Order 26 Rule 9 of the Code of Civil Procedure which is pending adjudication before the learned Trial Judge.

(Hiranmay Bhattacharyya, J.)