

D/L- 28
24/09/2025
Ct. No.-6
Aritra

C.O. 3511 of 2025

**Md. Golam Rahaman Satiulla @
Golam Rahaman Safiulla
Vs.
Md. Sariful Islam**

Mr. A. Chakraborty
Mr. Sarada Prasad Roy

....for the petitioner

This application under Article 227 of the Constitution of India is at the instance of the defendant and is directed against an order dated July 9, 2025 passed by the learned Civil Judge (Jr. Div.), 1st Court at Barasat in Title Suit No.69 of 2024.

By the order impugned, the application under Section 151 of the Code of Civil Procedure praying for restoration of possession with police help stood allowed.

The learned advocate appearing for the petitioner submits that the opposite party vacated the suit property and delivered khas possession of the same to the petitioner on December 20, 2023. He submits that suppressing such fact the petitioner filed a suit for declaration of tenancy right and for permanent injunction and obtained an ad interim order of injunction on January 19, 2024. He submits that it is well-settled that unless the rights of the parties are determined at the interlocutory stage, the ad interim order of injunction cannot be implemented through police help. He submits

that the learned trial judge without assigning any reasons allowed restoration of possession in favour of the opposite party with police help. He further submits that in case there is any breach of an order of injunction, the appropriate remedy lay under the provisions of Order 39 Rule 2A of the Code of Civil Procedure and not by way of filing an application under Section 151 of the Code of Civil Procedure praying for restoration of possession with police help.

It is not in dispute that the opposite party was a tenant in respect of the suit property under the petitioner. The copy of the tenancy agreement has been annexed to this civil revision application wherefrom this Court finds that the opposite party was inducted as a monthly tenant by virtue of a tenancy agreement dated August 1, 2020 for a period of three years at a monthly rental of Rs.1200/- per month with effect from August 1, 2020 till July 31, 2023.

The opposite party filed a suit for declaration of tenancy right and for permanent injunction. It is the case made out in the plaint that the defendant No.1 after taking rent for the month of July, 2023 in collusion with other defendants started to demand huge amount of money from the plaintiff/opposite party in advance for renewal of further agreement. It is the further case of the opposite party that the defendant No.1 along with his wife came to the A schedule shop room and trying to put a padlock on

the rented shop room of the plaintiff/opposite party and when the opposite party raised objection against such illegal activities the defendant No.1 and his wife uttered filthy languages directed against the plaintiff/opposite party and his son and threw out some goods from the rented shop room and threatened that they will evict the plaintiff/opposite party at any cost. It has been further stated in the complaint that on January 6, 2024 at the instigation of the defendant, the defendant No.1 son, wife and his aunty along with their men and agents came to the A schedule suit property and without any valid reason asked the plaintiff/opposite party to vacate the A schedule property with immediate effect. On such allegation the opposite party filed the suit for declaration of tenancy right and for permanent injunction restraining the petitioners and their men and agents from evicting the plaintiff/opposite party without due process of law from the A schedule property and from forcibly dispossessing the plaintiff/opposite party from the schedule suit property and from making any wastage and damage of the suit schedule property and/or from changing the nature and character of the suit property in any way and from causing any disturbance while continuing the business in the suit schedule property by the plaintiff/opposite party.

The plaintiff/opposite party filed an application under Order 39 Rule 1 and 2 of the Code of Civil Procedure.

The learned trial judge by an order dated January 19, 2024 passed an order of injunction restraining the defendants and their men and agents from dispossessing the plaintiff/opposite party without due process of law for a limited period.

Alleging that the petitioner has forcibly dispossessed the plaintiff/opposite party from the schedule shop room on April 15, 2024 in violation of the order of injunction, the plaintiff/opposite party filed an application under Section 151 of the Code of Civil Procedure praying for restoration of possession with police help.

It is the specific case made out in the application under Section 151 of the Code of Civil Procedure that on February 5, 2024 in the morning the defendants/petitioner illegally broke the padlock of the schedule shop room and damaged several saleable goods and structure in the shop room and the plaintiff/opposite party lodged a written complaint with the police station being G.D. Entry No.262 dated February 5, 2024. It was further stated in the said application that on February 7, 2024 at about 2.30 p.m. the plaintiff/opposite party came to know that in utter violation of the ad interim order of injunction the defendants/petitioners along with their men and agents were trying to make pucca construction by raising pucca wall by breaking the padlock of the schedule shop room and immediately after coming to know of such fact the plaintiff/opposite party along with his two sons

went to schedule suit property and tried to resist them, but the police personnel came there at and arrested his two sons and they were brought to the police station and detained there at for whole night illegally so that the defendants may carry on their illegal acts and activities. It was further stated in the said application that all of a sudden on February 15, 2024 at night the defendants have cut off the service wire of the electricity connection illegally with ill motive and disconnected the electricity in order to harass the plaintiff/opposite party and his sons. It was further stated in the said application that on April 15, 2024 the defendants along with their henchmen including wife of defendant No.1, namely, Maskura Begum, entered into the schedule shop room and they had taken away huge saleable goods and other items and destroyed the furniture. It was specifically stated in the said application that on April 15, 2024 the defendants forcibly dispossessed the plaintiff/opposite party from the suit property and kept it under lock and key.

The defendant/petitioner contested the said application by filing a written objection thereto. The allegations made in the application under Section 151 of the Code of Civil Procedure was denied by the defendant/petitioner. In the said written objection the petitioner contended that the relationship of landlord and tenant between the petitioner and the opposite party stood determined with the expiry of the period of tenancy as per

the tenancy agreement dated August 1, 2020 and the plaintiff left the suit premises with all his belongings on December 20, 2023 after delivery of khas and vacant possession of the suit premises in favour of the present defendant upon surrendering the tenancy verbally and upon surrender of possession the defendant/petitioner has been possessing the suit premises since December 20, 2023.

However, no document has been filed by the defendant/petitioner in support of her contention that the plaintiff/opposite party handed over possession of the suit shop room to the defendant/petitioner and delivered khas and vacant possession of the suit premises in favour of the defendant/petitioner on December 20, 2023.

Even from the case made out in the written objection it appears that even after the expiry of the period of tenancy by virtue of the tenancy agreement dated August 1, 2020, the plaintiff/opposite party was allowed to stay in the suit premises even thereafter.

Record reveals that the petitioner lodged a complaint before the Officer-in-Charge of the local police station on January 11, 2024. In the said complaint it has been specifically stated that on January 6, 2024 at about 7.30 a.m. the petitioner went to the suit property for collecting the rent from the plaintiff/opposite party in respect of the suit premises and at that point of time the plaintiff/opposite party verbally abused the petitioner with

filthy languages. It is also admitted in the written complaint made by the petitioner before the police authority that the plaintiff/opposite party was in possession of the suit premises on January 6, 2024.

It is not in dispute that the plaintiff/opposite party was inducted as a tenant in respect of the suit premises by the petitioner. The tenancy can be determined either by relinquishment of tenancy or by a decree for eviction passed by a competent court of law. No material has been produced by the petitioner to substantiate that the tenancy agreement was relinquished by the plaintiff/opposite party. Mere, non-payment of rent does not amount to relinquishment or termination of tenancy and if the petitioner has any grievances in that regard it was well open for the petitioner to take appropriate steps in accordance with law.

However, it is well-settled that unless the rights of the parties are determined at the interlocutory stage, restoration of possession with police help cannot be permitted if facts are in dispute. In the case on hand the petitioner, in the written complaint, admitted that the plaintiff/opposite party was in possession on January 6, 2024. No document has been produced by the petitioner to show that the plaintiff/opposite party has relinquished the tenancy thereafter or has delivered vacant and khas possession of the suit premises in favour of the petitioner.

After going through the materials on record this Court is of the view that the plaintiff/opposite party in the application under Section 151 of the Code of Civil Procedure has made out a case that he was forcibly ousted by the petitioner from the suit shop room in violation of the order of injunction. Though the petitioner sought to make out a case that the possession was handed over to the petitioner by the plaintiff/opposite party on December 20, 2023 but from the written complaint made by the petitioner on January 11, 2024, it is evident that the plaintiff/opposite party was still in possession of the shop room even after December 20, 2023.

The Hon'ble Division Bench in **Sujit Pal vs Prabir Kumar Sun & Ors.**, reported at **AIR 1986 (Cal) 220** held that the Court in exercise of powers under Section 151 of the Code of Civil Procedure can do justice by immediately intervening under the situation which require prompt intervention by the Court. The Hon'ble Supreme Court in the case of **Delhi Development Authority vs. Skippers Construction Company Pvt. Ltd. & Anr.**, reported at **(1996) 4 SCC 622** held that if a party is forcibly dispossessed in violation of the order of injunction and took possession of the suit property, it is the duty of the court to direct restoration of possession of the suit shop room to the person dispossessed with the aid of police.

This Court is, therefore, of the considered view that the plaintiff/opposite party succeeded in making out a

case for restoration of possession with police help as from the materials available on record it is evident that the petitioner dispossessed the plaintiff/opposite party from the suit property in violation of the order of injunction.

To the mind of this Court, the learned trial judge was right in allowing the prayer of the plaintiff/opposite party under Section 151 of the Code of Civil Procedure thereby directing restoration of possession of the plaintiff/opposite party with the aid of police authority.

For such reason this Court is not inclined to interfere with the order impugned.

Accordingly, CO 3511 of 2025 stands dismissed.

There will be no order as to costs.

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

(Hiranmay Bhattacharyya, J.)

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