

**IN THE HIGH COURT AT CALCUTTA
CIVIL REVISIONAL JURISDICTION
APPELLATE SIDE**

PRESENT:

THE HON'BLE DR. JUSTICE AJOY KUMAR MUKHERJEE

CO 3763 of 2024

**Dipu Roy & Ors.
Vs.
Goutam Mitra & Ors.**

For the Petitioner	:	Mr. Sukumar Ghosh Ms. Moumita Ghosh
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Heard on	:	19.02.2025
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Judgment on	:	21.02.2025
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Dr. Ajoy Kumar Mukherjee , J.:

1. This application has been preferred against order dated 6th September, 2024 passed by Civil Judge (Junior Division), Diamond Harbour in T.S. No.132 of 2006 (as renumbered) wherein the court below allowed defendant/opposite parties application under section 151 of the Code of Civil Procedure and thereby allowed the defendant opposite parties to make the repairing work and for that purpose, the Court below also appointed one advocate commissioner with a direction upon the commissioner to remain present at the time of repairing work and to submit a report.

2. Brief background of the present case is that predecessor of the petitioners /plaintiff instituted the present suit which was numbered initially as T.S. No. 265 of 1985 for declaration, injunction and recovery of khas possession and in the said suit plaintiffs also filed a petition for temporary injunction and learned Court below passed a *status quo* order in respect of the suit property as regards possession until further order. The opposite party no.1 and 2 filed an application under section 151 of the code on 15.03.2021 contending that the supporting pillars in the portion of the defendant are in a dilapidated condition and due to damaged condition of the pillars, the entire building may collapsed at any point of time and accordingly he sought for permission from the court below for making necessary repairing work. Plaintiff/petitioner herein filed written objection against the said application and learned Court below by the order impugned allowed defendants aforesaid prayer. The commissioner who was appointed to look after the repairing work has submitted her report on 3rd October, 2024 wherein she has specifically reported that the repairing work has already been completed on 15.09.2024 in presence of police personnel. In that view of the matter the present application has become infructuous.

3. However, considering the order from the stand point of its legality, it appears that the trial court upon considering rival submissions has formed definite opinion:-

“ if an order of repairing the pillar supporting the extended roof of said structure upon suit property be not passed, then in the rainy season both the plaintiffs and defendant will suffer irreparable loss of life and property and that cannot be left to happen because it would be unjust and the very purpose of the suit will become infructuous”.

4. However, he was cautious while passing the order so that such order may not cause prejudice to the plaintiff and that is why he directed that such repairing work would be conducted in presence of both the parties and their lawyer and also in presence of an advocate commissioner appointed by the court.

5. In such view of the matter, the order impugned is absolutely a balanced order and was passed, considering urgency in the interest of justice and the order impugned passed by the Trial Court has not resulted in any gross or manifest failure of justice nor there has been any illegality or perversity committed by the court below while passing the impugned order.

6. It is well settled that exercise of power under Article 227 of the Constitution of India and interfering of the order of the court below is restricted to the cases of serious dereliction of duty and flagrant violation of fundamental principles of law or justice, where if the High court does not interfere, a grave injustice remains uncorrected. From the facts and circumstances as stated above I find that no such situation occurred in the present context and as such the conclusion drawn by Trial Court considering factual aspect of the case, does not call for interference by this Court. In fact the order impugned does not suffer from any illegality irrationality or procedural impropriety.

7. In such view of the matter **CO 3763 of 2024** stands dismissed.

Urgent Xerox certified photocopies of this Judgment, if applied for, be given to the parties upon compliance of the requisite formalities.

(DR. AJOY KUMAR MUKHERJEE, J.)