

13.06.2025
Sl. No.307(DL)
Ct. No.29
srm

C.O. No. 3930 of 2024

Baburam Halder

Versus

Binoy Halder & Ors.

Mr. Lakshminath Bhyattacharya

...for the Petitioner.

Syed Nurul Arefin,
Mr. Sanju Agarwal

...for the Opposite Parties.

Affidavit of service filed by the petitioner is taken on record.

Being aggrieved by the order impugned dated 2nd August, 2024 passed by the learned Civil Judge (Junior Division), 3rd Court, Baruipur, South 24-Parganas in Title Suit No.452 of 2021, the present application has been preferred by the petitioner/plaintiff herein. By the order impugned, learned court below rejected the plaintiff/petitioner's prayer for police help made under Section 151 of the Code of Civil Procedure on 5th February, 2024 for implementation of the order of injunction.

It is submitted by Mr. Bhattacharya, learned counsel appearing on behalf of the petitioner that the petitioner as plaintiff filed the aforesaid Title Suit No.452 of 2021 with a prayer for declaration and permanent injunction so that the defendants cannot enter into such property or cannot disturb the peaceful

possession of the plaintiff over the suit property. The plaintiff also filed an application for temporary injunction to that effect and the defendants/opposite parties herein filed written objection against the injunction application. The learned trial court after hearing both the parties was pleased to pass an order of temporary injunction restraining the defendants from disturbing the peaceful possession of the plaintiff over the suit property and also restrained the defendants not to change the nature and character of the suit property till the disposal of the suit.

The allegation ventilated herein by the plaintiff/petitioner is that in spite of the order of injunction, the defendants/opposite parties herein threatening to enter in the suit property and to excavate soil and for which he lodged a complaint to the Superintendent of Police, Bauirpur Police District and also before the SDPO, Baruipur to take necessary steps so that defendant/opposite party cannot violate the order of injunction, dated 10th August, 2023.

Since the police did not take any action, the petitioner filed an application under Section 151 of the Code of Civil Procedure praying for police help to carry out the direction made in the order dated 10th August, 2023. The defendants/opposite parties also filed written objection against the same. However the learned court below by the impugned order rejected the plaintiff's aforesaid prayer.

Being aggrieved by the said order, the petitioner submits that the learned court below failed to appreciate that since there is an order of injunction it should have been obeyed and for that necessary order regarding police help ought to have been passed by him. He further submits that as the defendants/opposite parties were trying to excavate soil from the said property and also tried to disturb the plaintiff/petitioner's possession violating the order of injunction, he is entitled to get protection through the police authority.

Mr. Arefin, learned counsel appearing on behalf of the opposite parties raised objection and contended that unless the right, title, interest of the parties over the property is determined finally by way of trial the prayer made by the petitioner is premature and if it is allowed it will cause prejudice to the defendants/opposite parties' interest. He further submits that there is nothing to show that the defendants have done anything in violation of the order of injunction. He further submits that even if it is taken for granted that the defendants made any violation of order of injunction the appropriate remedy to the plaintiff/petitioner is to prefer a contempt application under Order XXXIX Rule 2A of the Code and not to pray for police help before the trial court. In this context, he also relied upon a judgment of the Hon'ble Apex Court in **Polavarapu Nagamani & Ors.**

vs. Parchuri Koteshwara Rao & Ors. reported in **2009 SCC OnLine AP 754.**

I have considered the submissions made by both the parties. On perusal of the injunction order, it appears that the trial court by the contested injunction order restrained the defendants from disturbing the plaintiff's peaceful possession over the suit property and also restrained the defendants not to change the nature and character of the suit property till disposal of the suit, considering it necessary and expedient for the protection and preservation of the property in question.

However, while he adjudicated the plaintiff/petitioner's application under Section 151 for police help, he rejected the same by making the following observation:

“Considering all aspects, this Court think the allegations made by the plaintiff should be proved by cogent and documentary evidence. In absence of proof of the facts alleged by the plaintiff, it will be violation of the fundamental principle of law and also causing miscarriage of justice in exercise of the inherent power of the Court u/s. 151 C.P.C.

Hence, the petition u/s 151 CPC dated 05.02.2024 filed by the plaintiff, praying for police help for implementing the order of injunction dated 10.08.2023 is considered and rejected for the interest of justice.”

Needless to reiterate that an order passed by a competent court has to be obeyed without any reservation. If the aggrieved party thinks that no such order could have been passed, it is open to him to approach the same court or higher court for

clarification, modification or setting aside the order. The aggrieved party however cannot refuse to obey or implement it. The mere fact that remedy is also available under Order XXXIX, Rule 2A, cannot be a ground to refuse prayer for police help.

Here though the contention of opposite party is that he has not done anything in violation of order of injunction, but what is astonishing is court below rejected the said prayer observing that in the absence of proof, it would be violation of fundamental principles of law causing miscarriage of justice, if he exercises inherent power, without arriving his reason, as to why plaintiff's prayer, if allowed, will cause miscarriage of justice and why he disbelieved plaintiff's averments made on oath.

In my considered view, the court below while recorded the aforesaid order has failed to record appropriate reason as to why he has rejected the petitioner's aforesaid prayer for police help. Considering the impropriety of the order impugned which is inherent in the order itself, I find that the prayer made by the petitioner is required to be reheard. In such view of the matter, the impugned order dated 2nd August, 2024 passed in Title Suit No.452 of 2021 is hereby set aside.

The learned court below is directed to hear the application filed by the plaintiff/petitioner under Section 151 of the Code of Civil Procedure seeking

police help for implementation of the injunction order afresh after giving opportunity to both the parties to contest and to pass a fresh order, without being influenced by any observation made herein, preferably within a period of two months from date of communication of this order.

Accordingly, C.O. 3930 of 2024 is disposed of.

Urgent Photostat certified copy of this order, duly applied for, be given to the parties upon compliance of all requisite formalities.

(Dr. Ajoy Kumar Mukherjee, J.)