

29.01.2025
Item No.22
RP
Ct. No.7

CO 4126 of 2024
Anowar Ali Mondal
Vs.
Habibar Mondal

Mr. Dipanjan Bhattacharya
.... For Petitioner

1. The petitioner has challenged the order no.10 dated 24.09.2024 passed by the learned Civil Judge (Junior Division), 2nd Court at Barasat. By the order impugned the application of the petitioner under Section 151 of the Civil Procedure Code praying for removal of unauthorized construction was rejected.
2. Learned advocate appearing for the petitioner submits that the opposite party herein has raised unauthorized construction in violation of the order of injunction passed under Order 39 Rule 1 and 2 of the Civil Procedure Code. He submits that since construction was made in violation of the order of injunction, the learned trial Judge ought to have directed demolition of such construction.
3. It appears from the record that a Commissioner was appointed by the learned trial Judge and he submitted a report before the learned trial Judge on 24th September, 2024. The Commissioner has specifically stated in point no.1 of his report that

there are structures standing over the suit schedule property and the nature of the structure has been specifically indicated in the said report.

4. Before passing an order directing removal of unauthorized construction a specific finding has to be arrived at as to whether the said construction was unauthorized being raised in violation of the order of injunction or not. Though the report of the Commissioner states that some structures are standing over the said property but the issue as to whether the same were constructed in violation of the order of injunction is a matter of adjudication by the learned trial Judge.
5. Learned advocate appearing for the petitioner could not point out to this Court that there is any finding recorded by the learned trial Judge to the effect that the construction indicated in the report of the Commissioner was made in violation of the order of injunction.
6. In view thereof, this Court is of the considered view that the learned trial Judge was right in rejecting the application under Section 151 of the Code of Civil Procedure on the ground that the same is a premature one.
7. For the reasons as aforesaid, CO 4126 of 2024 is dismissed. There shall be no order as to costs.

8. It is made clear that dismissal of this application shall not preclude the petitioner from taking out an appropriate application in that regard at the appropriate stage, if otherwise entitled to.
9. Urgent Photostat certified copy of this order, if applied for, be delivered to the learned advocates for the parties, upon compliance of all formalities.

(HIRANMAY BHATTACHARYYA, J.)