

203. 23.06.2025
Court No.6
(Tanmoy)

CO/4498/2024

MR. MARK FERNANDES AND ORS.
VS
GHULAM MURTAZA

Mr. Partha Pratim Roy
Mr. Apratim Bhattacharya
Mr. Sagar Chowdhury

... for the petitioner.

Mr. Mrinal Kanti Ghosh
Mr. Tanmoy Mukherjee
Ms. Kalpana Dutta
Mr. Souvik Das
Mr. Rudranil Das

...for the opposite parties.

1. This application under Article 227 of the Constitution of India is at the instance of the defendant and is directed against an order being no. 97 dated 7th of October, 2024, passed by the learned Civil Judge, Bench-V, City Civil Court at Calcutta, in Title Suit No.35226 of 2014.

2. By the order impugned, an application under Section 151 of the Civil Procedure Code, 1908, praying for restoration of supply of water and an application under Order XXXIX, Rule 7 of the Civil Procedure Code, 1908, praying for appointment of a Commissioner for holding local inspection in aid of the application for restoration of water supply, stood rejected.

3. Mr. Roy, learned Advocate appearing for the petitioners, submits that the application was rejected

treating the defendant/petitioner, to be trespasser in the suit premises as the recorded tenant in the suit flat, died in the year 1988 and after his death, his wife, being his legal heir, was accepted as tenant in respect of the suit flat and she also died on 11th of November, 2010.

4. Mr. Roy further submits that the petitioner is a tenant in respect of the suit property. He submits that a tenant cannot be deprived from enjoying uninterrupted supply of water during the pendency of the said suit.

5. Mr. Ghosh, learned Advocate assisted by Mr. Mukherjee, appearing for the opposite party, submits that earlier applications for restoration of supply of water and the application for local inspection was rejected and the said orders had already attained finality. He further submits that the subsequent application for local inspection, which was allowed by the learned Trial Judge, was subsequently set aside and remanded by a co-ordinate Bench of this Court and after remand the petitioners did not proceed with such application and for such reason, the same was dismissed as “not pressed”. He further submits that the present application is barred by the principles of *res judicata*.

6. In reply, Mr. Roy, learned Advocate appearing for the petitioners, submits that the earlier applications were not dismissed on merit and,

therefore, the principles of *res judicata* cannot apply to the case at hand.

7. Record reveals that the defendant no.2 filed two petitions on 26.7.2017, one under Section 151 of the Civil Procedure Code, 1908, praying for restoration of normal supply of water in the suit flat and the other, an application under Order XXXIX, Rule 7 of the Civil Procedure Code, 1908, which was filed in aid of the application under Section 151 of the Code.

8. After going through the said application, this Court finds that it was alleged that since 22nd of June, 2017, on and from 8:00 a.m., the supply of water to the suit premises has been completely stopped by the plaintiff as a result, there is no supply of water thereof.

9. This Court finds that the reasons for rejecting the said application was that except Jason Fernandes the other defendants did not sign or execute the power of attorney in favour of Bismillah Khan and it was held that the status of Bismillah Khan, who filed the application for the defendant without submitting the power of attorney, is doubtful.

10. The learned Trial Judge, by an order dated 14th of September, 2017, rejected such application. The petitioner herein did not challenge the said order and the same attained finality.

11. Thereafter, the petitioner filed two applications one under order XXXIX, Rule 7 of the Civil Procedure Code, 1908 and the other, an application under Section 151 of the Code for restoration of supply of water on 29.01.2018. The application under XXXIX, Rule 7 of the Code was fixed for hearing and the same was ultimately, allowed by an order dated 22nd of February, 2018. The application under Section 151 of the Code was kept pending.

12. Challenging the order dated 22nd of February, 2018, allowing the application for local inspection, the opposite party herein approached this Court by filing a civil revisional application being CO/1196/2018. A co-ordinate Bench, by an order dated 19th of February, 2020, directed the learned Judge, Bench-V, City Civil Court at Calcutta, to hear out the application dated 29th of January, 2018, filed by the defendant no.2 afresh after providing sufficient opportunity of hearing to either of the parties bearing in mind the observation made by the learned Trial Judge on 14th of September, 2017. Thereafter, the application for local inspection was dismissed by an order dated December 23, 2020. The petitioner herein did not take any step either for restoration of such application or did not challenge the same before any higher forum.

13. Thereafter, the petitioner filed an application under Section 151 of the Civil Procedure Code, 1908

on July 31, 2024, praying for restoration of water supply. It is alleged that on 16th of July, 2024, the defendant no.2 was surprised to see that there was no supply of water through the tap inside his flat. The petitioner also filed an application under Order XXXIX, Rule 7 of the Code of Civil Procedure, 1908, in aid of such application. Initially, the application for restoration of supply of water to the suit property was filed on 26.7.2017 with an allegation that supply of water was disconnected on June 22, 2017.

14. Mr. Roy, learned Advocate appearing for the petitioner, could not produce any order passed by any Court of Law whereby the supply of water was directed to be restored. There is also no averment in the application under Section 151 of the Code stating as to when the supply of water which was initially alleged to have been disconnected on 22nd of June, 2017, was restored.

15. This Court finds at different point of time different applications were filed either through the constituted attorney or through a person claiming to have been authorized by the constituted attorney and after being unsuccessful in all such attempt the petitioner at last approached the learned Trial Judge for restoration of supply of water.

16. From the aforesaid fact, it appears to this Court that the petitioner is only attempting to delay the hearing of the suit for eviction. Though the

reasons assigned by the learned Trial Judge that the defendant/petitioner is a trespasser, cannot be supported at this stage but the fact remains that the petitioners are disentitled to be favoured with an order for restoration of supply of water after considering the previous conduct of the defendant. It would be also relevant to point out that despite requests made by the learned Trial Judge to the defendants to disclose their identity and the relationship with the original tenant, they avoided to disclose. That apart, the suit is at the stage of evidence and 18th of July, 2025, has been fixed for evidence of the defendant. For all the reasons as aforesaid, this Court is not inclined to interfere with the order impugned.

17. With the above observations and directions the civil revisional application being CO/4498/2025 stands disposed of.

18. Urgent Photostat certified copy of this order, if applied for, be made available to the parties upon compliance with all requisite formalities.

(HIRANMAY BHATTACHARYYA, J.)