

Ajoy Pal Chowdhury Vs The State of West Bengal and Another

Court: Calcutta High Court

Date of Decision: July 15, 2009

Acts Referred: Criminal Procedure Code, 1973 (CrPC) â€” Section 144

Citation: (2009) 3 CALLT 682

Hon'ble Judges: Ashim Kumar Roy, J

Bench: Single Bench

Advocate: Madan Lal, for the Appellant;

Final Decision: Dismissed

Judgement

Ashim Kumar Roy, J.

Heard Mr. Madan Lal the learned advocate, appearing on behalf of the petitioner.

2. In the instant criminal revisional application the petitioner challenged an order passed in connection with a proceeding u/s 144 of the Code of

Criminal Procedure, whereby the learned Magistrate dropped the proceeding on the ground that the dispute is civil in nature.

3. The order impugned is quoted below:

20.1.09-Petn files a hazira. OP appeared and submit the show cause. No report. From the documents it appears that the petitioner once moved

his claim before learned Asst. Dist. Judge, Ranaghat and his claim was registered vide T.S. No. 1 of 2007 in the Court of Civil Judge (Sr. Div),

Ranaghat on the self-same issue. Again the petitioner takes shelters of this Court to establish his claim which is not accepted. It is a case of pure

civil nature.

Hence the case is filed.

4. It appears from the impugned order after hearing both the parties the learned Magistrate dropped the said proceedings on a conclusion that the

dispute is civil in nature. It further appears the learned Magistrate come to such conclusion on a finding that over the self-same issue a title suit

being T.S. No. 1 of 2007 is pending before the Court of the Civil Judge (Senior Division) Ranaghat, between the parties and the petitioner"s

prayer for injunction against the opposite party has been turned down.

5. It is well settled that the provisions of section 144 of the Code does not confer any power of the Executive Magistrate to adjudicate or decide

any dispute of civil nature or question of title to properties or entitlements to rights but at the same time in cases where such disputes or titles or

entitlements" to right have already been adjudicated and have become the subject matter of judicial pronouncement and decrees of Civil Court of

competent jurisdiction then in the exercise of power u/s 144 of the Code the Court must have due regard to the order passed by the Civil Court,

although it would be the paramount consideration to maintain the public peace and tranquility. Having regards to the impugned order, I find that the

learned Judge has come to the conclusion that the dispute is of civil in nature because already the said dispute is the subject matter of a suit pending

before a competent Civil Court and in connection therewith the prayer for injunction made on behalf of the petitioner has been rejected. Thus it

cannot be said that the learned Judge acted contrary to the law. Moreover, having gone through the application moved before the learned Court

below, I find nothing has been pleaded alleging apprehension of breach of peace or public tranquility.

6. Now having regards to the impugned order, I find the learned Magistrate has not committed any mistake when he held the dispute is civil in

nature, since over the self-same issue a suit instituted earlier was still pending before a competent Civil Court and refused to pass any restrained

order against the opposite party as in the said pending suit petitioner"s prayer for injunction against the opposite party was rejected by the Civil

Court.

7. This criminal revisional application has no merit and, accordingly, stands dismissed.

8. Criminal section is directed to deliver urgent Photostat certified copy of this Judgment to the parties, if applied for, as early as possible.