(2011) 12 CAL CK 0029

Calcutta High Court

Case No: C.O. No. 2017 of 2011

Joydev Das		APPELLANT
	Vs	
Khandubala Das		RESPONDENT

Date of Decision: Dec. 8, 2011

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 21 Rule 32, Order 39 Rule 1, Order 39 Rule 2, Order 39 Rule 2A, 151
- Constitution of India, 1950 - Article 227

Citation: (2012) 1 CHN 300

Hon'ble Judges: Dipankar Datta, J

Bench: Single Bench

Advocate: Rabindra Nath Mahata and Prasanta Bihari Mahata, for the Appellant; Parimal Kumar Dwari for the Opposite Party No. 1, for the Respondent

Final Decision: Allowed

Judgement

Dipankar Datta, J.

The opposite party No. 1, being the mother of the petitioner, instituted a suit for declaration and injunction before the Trial Court impleading him as defendant No. 1. She sought relief of declaration to the effect that the petitioner has no right, title, and interest in respect of the suit property and for injunction restraining him from disturbing her peaceful possession and enjoyment of such property. The defendant No. 2 in the suit is the Assistant Engineer of the West Bengal State Electricity Company Limited (hereafter the company). In connection with the suit, an application under Order 39 Rules 1 and 2 read with section 151, CPC was filed by the opposite party No. 1. While praying for an order of temporary injunction on the petitioner not to disturb her peaceful possession and enjoyment of the suit property, she also prayed for an order restraining the petitioner from changing the nature and character of the suit property and from obtaining supply of electricity in the portion of the suit property under his occupation. Upon hearing the opposite party No. 1, the Trial Court by order dated July 15, 2009 granted exparte ad

interim relief as prayed for by her.

2. After service of summons, the petitioner entered appearance in the suit and contested the application for temporary injunction by filing a written objection. The petitioner pleaded in his written objection to the application for injunction that the suit property originally belonged to his father. On the death of his father, the opposite party No. 1, the petitioner and his siblings inherited the same along with other non-suit property in ejmali. The family having expanded, the petitioner constructed a house in a portion of the suit property and started residing therein with his family after amicable partition. It was alleged therein that to deprive him of the suit property, the opposite party no. 1 was claiming that the suit property was her purchased property. Since his possession was being disturbed and/or interfered with by the opposite party no. 1, he has instituted a previous suit praying for a declaration that he has 1/10th share in the suit property, which is pending. Allegation levelled against him by the opposite party no. 1 to the effect that he has been disturbing her possession or attempting to change the nature and character of the suit property was categorically denied.

3. The Trial Judge heard the parties and by order dated August 24, 2009 disposed of the said application. The earlier order of temporary injunction was maintained except that the petitioner was granted liberty to obtain supply of electricity in the portion of the suit property under his occupation.

4. The petitioner in due course of time filed his written statement in the suit within the time stipulated by the Trial Court. The suit is pending for adjudication.

5. The opposite party No. 1 carried the order dated August 24, 2009 in appeal, feeling aggrieved by the liberty granted to the petitioner to obtain supply of electricity. In connection therewith, an application for stay was filed which the petitioner opposed by filing a written objection. By an order dated August 2, 2010, the appeal stands dismissed for default without any steps having been taken for its restoration by the opposite party No. 1.

6. It was at this stage that the opposite party No. 1 filed an application u/s 151 of the Code praying for police help to ensure compliance of the order of injunction granted by the Trial Court by the petitioner. She alleged therein that in clear disobedience of the order of injunction, the petitioner was attempting to disturb her possession and in course of giving effect to his ill motive of changing the nature and character of the suit property had physically harmed her and her other two sons for which a complaint had to be lodged with the local police.

7. The petitioner opposed the application by filing a written objection wherein he denied the material allegations levelled by the opposite party No. 1. According to him, neither did he disturb possession and enjoyment of the suit property by the opposite party No. 1 nor did he make any attempt to change its nature and character. It was his specific claim that

in terms of the liberty granted by the Trial Court, he had made necessary arrangements with the company for supply of electricity upon compliance with all legal formalities. It was the opposite party No. 1 and her other two sons who had obstructed the personnel of the company for which supply of electricity to the portion occupied by him could not be affected. As a counter-blast, the opposite party No. 1 had filed the application for police help on the instigation of her other two sons who are bent upon depriving the petitioner of his share in the suit property, which originally belonged to his father as well as the basic necessities of life. Accordingly, a prayer was made for rejection of the application u/s 151 of the Code.

8. The learned Judge of the Trial Court considered the application for police help on contest on June 2, 2011. A specific contention was raised on behalf of the petitioner that the application for police help is not maintainable and if at all the opposite party No. 1 is aggrieved, she must take recourse to section 36 of the Code. Countering such contention of the petitioner, learned Advocate for the opposite party No. 1 referred to a decision of this Court reported in 2010(2) CLJ (CAL) 110: Paresh Chandra Das vs. Bikash Chandra Das & Ors. to contend that an application u/s 151 of the Code for police help for implementation of an order of injunction is maintainable. By order No. 21 dated June 2, 2011, the learned Judge disposed of the application u/s 151 of the Act by passing, inter alia, the following order:

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Since there is an order of temporary injunction restraining the defendant from disturbing peaceful possession and enjoyment of the plaintiff in the suit property and since it is alleged by the plaintiff that defendant No. 1 is trying to change the nature and character of the suit property, hence, the plaintiffs prayer for police help for implementation of the order of injunction should be allowed.

In the above circumstances, hence, it is,

ORDERED

that the petition dated 05.08.2010 filed by the plaintiff for police help is considered and allowed.

The I.C., Kotwali P.S. is directed to render necessary police help for the purpose of implementation of the order of injunction passed by the Ld. Court on 24.08.2009 so that the order of injunction passed by the Ld. Court is maintained and followed by the parties in its true spirit. At the same time the defendant shall be a liberty to take electric connection in his occupation as was observed and directed by the Ld. Court by the order dated 24.08.2009.

Accordingly, the petition u/s 151 C.P.C. is disposed of.

Let the extract copy of the order be sent to I.C., Kotwali P.S. along with the copy of order dated 24.08.2009.

9. The aforesaid order is under challenge in this revisional application under Article 227 of the Constitution.

10. Mr. Mahata, learned Advocate appearing for the petitioner contended that the learned Judge of the Trial Court acted illegally in directing the officer-in-charge of the local police station to render police help for implementation of the order of injunction. According to him, although the opposite party No. 1 had alleged that the petitioner had physically harmed her and her other two sons resulting in bloodshed, no documentary evidence that they had to be treated for the injury caused to them was produced. More importantly, no finding was returned by the learned Judge that the petitioner had, in fact, disturbed possession and enjoyment of the suit property by the opposite party no. 1 or attempted to change the nature and character thereof. He contended that the defence set up by the petitioner was not at all considered and only because the opposite party No. 1 had alleged disobedience to and/or violation of the Court''s order dated August 24, 2009 that the order for police help followed, as if it were to be granted as a matter of course. He also contended that the learned Judge did not at all deal with the contention that the application for police help was not maintainable having regard to the provisions of section 36 of the Code. Referring to the decision in Paresh Chandra Das (supra), he submitted that there the learned Judge of this Court found as a matter of fact that the order of injunction passed by the Trial-Court had been violated and, therefore, the Trial Court''s interference was warranted on facts. Such, however, is not the case here. The said decision being distinguishable, the learned Judge without any finding of disobedience or violation ought not to have activated the police authority. He, accordingly, prayed for an order to set aside the impugned order.

11. Per contra, Mr. Dwari, learned Advocate for the opposite party No. 1 contended that the order impugned does not suffer for any error of jurisdiction and, therefore, is not liable to be interfered. According to him, the order of injunction is subsisting and the trial Court having directed the police authority to render assistance to ensure that the order of the Court is maintained and followed by the parties to the suit, the petitioner cannot be said to be prejudiced thereby more particularly when it proceeds to grant him liberty to obtain supply of electricity. He, accordingly, prayed for dismissal of the revisional application.

12. I have heard learned Advocates for the parties and considered the materials on record.

13. Power under Article 227 has to be exercised sparingly and in exceptional cases is settled law. It is in rare cases where the subordinate Court acts beyond the bounds of its authority, or passes a perverse order, or acts in flagrant violation of fundamental principles of law and justice thereby causing miscarriage of justice, that interference by the High Court would be justified. Does the order impugned justify interference on any of

the above grounds is the issue that requires an answer here.

14. It is settled law that section 151 of the Code is not to be resorted to when the Code provides a remedy for the aggrieved party. An order of injunction, if not complied with or obeyed by a party bound by such order, may be executed in terms of section 36 of the Code read with Order 21 Rule 32 thereof. Also, the party complaining of violation or disobedience may pursue the remedy under Order 39 Rule 2A of the Code. True it is that an aggrieved party may not have immediate relief by pursuing the remedy of execution. It is equally true that although Order 39 Rule 2A deals with the subject of imposition of penalty on the party guilty of violation or disobedience of an order of Court, it does not provide any relief to the party in whose favour the Court has passed the order. It is, therefore, recognized that in appropriate cases where (i) facts are not in dispute, and (ii) the Court is satisfied that a party bound by an order of injunction has violated and/or disobeyed the same, (iii) thereby causing grave and serious injury to his adversary, and (iv) ends of justice demand the Court''s interference for granting immediate relief to the party suffering the injury, that recourse to section 151 of the Code may be had for setting things right.

15. Bearing in mind the aforesaid principle, it has to be examined whether the opposite party No. 1 did at all set up a valid claim for ordering police help in exercise of the inherent power of the Court to implement the order of injunction or not.

16. Ordinarily, a party to the suit suffering an order of injunction against which no appeal has been preferred or review has not been applied for ought not to complain if the Court directs the police to render help for ensuring implementation of such order. To this extent, Mr. Dwari is right that the order impugned only directs the police to ensure that the order of injunction is honoured by the parties to the suit and nothing more, and thus does not prejudice the petitioner; therefore, the Court exercising power under Article 227 of the Constitution ought not to interfere. However, an order for police help cannot be made on the mere asking of a party but the inherent power must be exercised with care, caution and circumspection after reaching a satisfaction that the party urging the Court to come to his aid has, without any iota of doubt, been able to establish attempted or actual violation of/ disobedience to an order of Court.

17. The defence of the petitioner to the application u/s 151 of the Code has been noted in paragraph 8 (supra). Since the petitioner had denied the material allegations levelled against him by the opposite party No. 1, it was obligatory for the Trial Court for arriving at a definite conclusion on the rival claims to allow the parties to lead evidence. That could be led, if an application for execution been filed. Without appreciation of the evidence that the parties could lead, it seems to be impossible for the trial Court to return a specific finding that the petitioner indeed indulged in acts of commission amounting to violation of or disobedience to the order of injunction and/or is an attempt to violate/disobey. The Trial Court did not record any such specific finding ''justifiably so, but proceeded to order police help merely by relying on the allegation made by the opposite party No. 1, as would be

evident from the portion of its order extracted (supra). A party to the lis ought not to suffer an order merely on the allegation made by the party in the absence of proof of the facts alleged. Circumstances justifying exercise of inherent power were not present and the learned Judge indeed acted in flagrant violation of the fundamental principles of law and Justice causing miscarriage of justice in the exercise of his jurisdiction, warranting interference under Article 227 of the Constitution.

18. The order impugned stands set aside. The revisional application stands allowed, without order for costs. It shall be open to the opposite party No. 1, having regard to the nature of the allegations made, to pursue the other remedies the Code provides to her for redress of her grievance.

Photostat certified copy of this judgment and order may be furnished to the applicant at an early date.