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(2012) 10 CAL CK 0062

Calcutta High Court

Case No: C.O. No. 3267 of 2012

Sri Jahar Mondal — APPELLANT

Vs

Seikh Aashan Ali — RESPONDENT

Date of Decision: Oct. 3, 2012

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 39 Rule 1, Order 39 Rule 2, Order 39 Rule 2A, 151

Citation: (2012) 10 CAL CK 0062

Hon'ble Judges: Prasenjit Mandal, J

Bench: Single Bench

Advocate: S.P. Roy Chowdhury, Mr. Sibasis Ghosh and Mrs. Debjani Bandyapadhyay, for the Appellant; Prabhat Kr. Chattapadhyay, for the Respondent

Final Decision: Allowed

Judgement

Prasenjit Mandal, J.
Challenge is to the Order No. 26 dated August 28, 2012 passed by the learned Civil Judge (Junior Division), 2nd Court, Burdwan in Title Suit No. 105 of 2010 thereby rejecting an application u/s 151 of the CPC for giving police help prayed for the plaintiff. The plaintiff/petitioner herein instituted the aforesaid suit before the learned Civil Judge (Junior Division), 2nd Court, Burdwan against the defendant/opposite party herein for declaration of plaintiff''s right, title and interest as developer in the construction of ''B'' schedule property, permanent injunction and other reliefs. In that suit, the plaintiff filed an application for temporary injunction and that application for temporary injunction under Order 39 Rule 1 & 2 of the CPC was allowed on contests restraining the defendant from interfering with the plaintiff''s peaceful possession and construction over the suit property till the disposal of the suit and/or until further orders. Thereafter, the plaintiff filed an application for implementation of that order with police assistance and that application was rejected by the impugned order. Being aggrieved, this application has been preferred.

2. Having heard the learned Advocates of both the sides and on perusal of the materials-on-record, I find that the above facts are rather, admitted. The plaintiff got an order of injunction as recorded above and the defendant/opposite party herein did not prefer any appeal against the said order and so, the order had reached its finality. Subsequently, when the prayer for implementation of the said order was sought for with the help of police, the learned Trial Judge rejected the prayer holding, inter alia, that the plaintiff did not file any application under Order 39 Rule 2A of the CPC and no local inspection was sought for by the plaintiff stating violation. The ground as assigned by the learned Trial Judge, I hold, cannot be supported.

3. While arguing the matter, Mr. S.P. Roy Chowdhury, learned Senior Advocate for the petitioner, has rightly submitted that if the petitioner is to take steps under Order 39 Rule 2A of the CPC, the learned Trial Judge may pass order for attachment of the property of the defendant and also may pass order for imprisonment of the defendant, but, the remedy of the petitioner would remain untouched. When such a situation exists, if the prayer for police assistance as prayed for is granted, the problem may be solved and the order of injunction as granted by the learned Trial Judge may be duly honoured. The Court has a duty to see that the order passed by the learned Trial Judge is being implemented. In support of such contention of the petitioner, I find that the plaintiff has filed a G.D. with the local police, when he alleged the violation of the order of injunction. So, the conduct of the plaintiff/petitioner herein supports the existence of such a situation against the defendant/opposite party herein.

4. Mr. Prabhat Kr. Chattapadhyay, learned Advocate for the opposite party, has submitted that when there is an appropriate relief under Order 39 Rule 2A of the CPC, an application u/s 151 of the CPC does not lie. In support of his contention, he has referred to the decisions of State of West Bengal and Others Vs. Karan Singh Binayak and Others, .

5. With due respect to the learned Advocate for the opposite party, I am of the view that in spite of the remedy available under Order 39 Rule 2A of the CPC, the Court is competent to pass appropriate orders so that the order of injunction may be duly maintained and the application u/s 151 of the CPC may be appropriate for police assistance, if the situation demands. The decisions referred to by the learned Advocate for the opposite party are not on the exact point we are dealing with, but, those relate to the general provision that when there is a specific provision of a statute, exercise of inherent power u/s 151 of the CPC is not permissible. So, I am of the view that in appropriate cases, the Court may render police assistance, if the situation demands, for maintaining the order of injunction passed by the learned Trial Judge.

6. The learned Advocate for the opposite party has also referred that the opposite party instituted a criminal case against the petitioner and the plaintiff was arrested on the basis of the complaint and thereafter, he was released on bail. In this regard, I am of the view that the criminal matter shall be disposed of in accordance with the law of the land and

so, for that reason, the prayer for police help cannot be refused, if the situation demands, rendering police assistance. So, the submission of the learned Advocate for the opposite party in this regard cannot be accepted.

7. In that view of the matter, I am of the opinion that the learned Trial Judge was not justified in rejecting the prayer for rendering the police assistance.

8. The application succeeds and is, therefore, allowed.

9. The impugned order is hereby set aside.

10. The application for rendering police help stands allowed.

11. The learned Trial Court shall take effective measures in this regard from its end.

12. Considering the circumstances, there will be no order as to costs. Urgent xerox certified copy of this order, if applied for, be supplied to the learned Advocates for the parties on their usual undertaking.