

(2014) 08 CAL CK 0068
In the Calcutta High Court
Case No : C.O. No. 3368 of 2013

Anup Kumar Roy

APPELLANT

Vs

Utpal Chakraborty

RESPONDENT

Date of Decision : 29-08-2014

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 151
Constitution of India, 1950 — Article 227

Citation : (2014) 4 CHN 723

Hon'ble Judges : Arindam Sinha, J

Bench : Single Bench

Advocate : Probal Kumar Mukherjee, Sr. Advocate and Arijit Chakraborty, Advocate for the Appellant; Bidyut Kumar Banerjee, Sr. Advocate and Shila Sarkar, Advocate for the Respondent

Final Decision : Dismissed

Judgement

Arindam Sinha, J.—This application made under Article 227 of the Constitution of India is directed against order no. 14 dated 18th June, 2013, made by the Court of Civil Judge, 2nd Court, Maldah, whereby, inter alia, an application u/s 151 of the CPC made by the plaintiffs seeking intervention of the local Police Station for implementation of status quo order passed earlier, was rejected.

2. By order no. 8 dated 6th March, 2013, made on the injunction application of the plaintiffs it was found from a bare reading of plaint, the plaintiffs have been admitted as commission agent of the defendants/owners of the suit land. Considering the mischief or inconvenience which may likely to be caused by refusing injunction will be greater than which is likely to arise from granting the same, the learned Court was of the opinion there should be a status quo injunction order till disposal of the suit and ordered accordingly.

3. Mr. Mukherjee, learned senior advocate appearing on behalf of the petitioners/plaintiffs submitted the learned Court below misdirected itself in refusing intervention by the police for implementation of the said order of status quo. He

relied on the judgments reported in *Meera Chauhan Vs. Harsh Bishnoi and Another*, 2010 (2) CLJ (Cal) 110 *Smt. Charubala Dev Nath Vs. Shri Niranjan Pathak*,, to submit it was well-settled the Court could invoke its inherent powers to direct the police to render assistance for the purpose of implementation of an order passed by it.

4. Mr. Banerjee, learned Senior Advocate appearing on behalf of the opposite parties/defendants submitted the claims of the plaintiffs that they are respectively supervisor and cashier in the matter of collecting rents and other moneys from persons who come to sell their products in Pakua Hat situated on land belonging to the opposite parties, could not be established prima facie in view of, inter alia, the registered Power of Attorney for conducting the business of the said hat in favour of the plaintiffs having been cancelled on 15th November, 2008 and notice thereof duly published in the Newspaper. He went on to rely on the decision reported in *Joydev Das Vs. Khandubala Das*, to submit 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 or disobedience to an order of Court. He drew the attention of this Court to the record in the impugned order whereby the learned Court below had said, "This instant application u/s 151 of the C.P. Code is not be fitting in the present circumstances of this suit because this court has no opportunity to take evidence in this regard and the status injunction order as passed in this suit implies that the parties to the suit shall remain in the position to which they were on the date of passing that order. This is not adjudicated by that injunction application as to who are conducting the business of that village hat and in such circumstances this court should not pass any direction upon the local police station for implementation of the said temporary injunction order."

5. In *Charubala Dev Nath and Paresh Chandra Das* this Court had taken the view the Court has the power u/s 151 of the CPC to direct the police to render help for implementation of its order. However by *Joydev Das* the pre-condition for the purpose of making such an order for police help being the Court was required to reach a satisfaction that the party urging the Court to come to his aid had without any iota of doubt been able to establish attempted or actual violation or disobedience to an order of the Court, was laid down.

6. This Court notices in *Meera Chauhan* the Hon"ble Supreme Court held as follows:-

"At the same time, it is also well settled that when parties violate order of injunction or stay order or act in violation of the said order the Court can, by exercising its inherent power, put back the parties in the same position as they stood prior to issuance of the injunction order or give appropriate direction to the police authority to render aid to the aggrieved parties for the due and proper implementation of the orders passed in the suit and also order police protection

for implementation of such order."

7. The Hon"ble Supreme Court having declared it is also well-settled that when parties violate order of injunction or stay order or act in violation of the said order the Court can, inter alia, give appropriate direction to the police authority to render aid to the aggrieved parties for the due and proper implementation of the orders passed in the suit and also order police protection for implementation of such order, the precondition imposed by Joydev Das attaches in requiring the party praying for police help to prove there has been violation of the order sought to be implemented thereby. There being nothing on record to show there was violation of the order of status quo, this Court does not find any reason to interfere with the impugned order.

8. There is, thus, no merit in the application made under Article 227 of the Constitution of India and the same is accordingly dismissed.

9. Urgent photostat certified copy of this order if applied for be given to the parties on usual undertakings.