
(2019) 02 CAL CK 0048

In the Calcutta High Court

Case No : Civil Order/Misc. Cas (Co) No. 4296 Of 2018

Khokan Gharami And Others

APPELLANT

Vs

Deben Mridha And Others

RESPONDENT

Date of Decision : 13-02-2019

Acts Referred:

Code Of Civil Procedure, 1908 — Section 36, 151, Order 21 Rule 32, Order 29 Rule 2A
Constitution Of India, 1950 — Article 227

Citation : (2019) 02 CAL CK 0048

Hon'ble Judges : Sabyasachi Bhattacharyya, J

Bench : Single Bench

Advocate : Suman Chattopadhyay, Surajit Sen, Tapas Singha Roy

Judgement

Sabyasachi Bhattacharyya, J

1. The present application under Article 227 of the Constitution of India has been preferred by the plaintiffs in a suit for declaration and permanent injunction, challenging an order whereby the trial court refused the petitioners' application for police help to implement an order of status quo, captioned to be under Section 151 of the Code of Civil Procedure, was refused by the trial court.
2. The trial Judge proceeded on the premise that such an application, since filed under Section 151 of the Code, was not in proper form. The parties, it was held, might invoke the provisions of Order XXXIX Rule 2A of the Code of Civil Procedure for getting justice.
3. Learned counsel for the petitioners argues that the court had ample power to grant police help for the purpose of implementing its own order by invoking its inherent powers under Section 151 of the Code.
4. In support of such proposition, learned counsel for the petitioners cites a judgment reported at 85 CWN 958 [Saudamini Roychowdhury vs. Satyendra Nath Sarkar], wherein a co-ordinate bench of this court held that the order passed in the said matter by the trial court, refusing a similar application on the

ground that the said court had no jurisdiction to make such an order, could not be allowed to stand and directed the trial court to pass appropriate directions upon the police as prayed for in the application under Section 151 of the Code.

5. Learned counsel for the petitioners thereafter cites another judgment of a co-ordinate bench of this court, reported at 2010 (2) CLJ (Cal) 110 [Sri Paresh Chandra Das vs. Sri Bikash Kumar Das & Ors.], holding that since admittedly the interim order of injunction was still in operation, the trial Judge ought to have allowed the plaintiff's prayer for grant of police help for implementation of order of injunction. In the said case also, the application for police help had been filed under Section 151 of the Code of Civil Procedure.

6. Learned counsel next cites a division bench judgment of the Andhra Pradesh High Court, reported at AIR 1971 Andhra Pradesh 53 [Rayapati Audemma vs. Pothineni Narasimham]. In the said case, the division bench was of the opinion that in order to do justice between the parties or to prevent the abuse of process of the court, civil courts have ample jurisdiction to give directions to the police authorities to render aid to the aggrieved parties with regard to implementation of the orders of the court or the exercise of the rights created under orders of court. The police authorities, it was held, owe a legal duty to the public to enforce the law. It was further held that the civil courts can give appropriate directions under Section 151 of the Civil Procedure Code to render aid to the aggrieved parties for the due and proper implementation of the orders of court and it could not be said that for such a case the exercise of the inherent power under Section 151 of the Code was devoid of jurisdiction. The division bench held that there was no express provision in the Code prohibiting the exercise of such a power.

7. Learned counsel for the opposite parties, on the other hand, places reliance on a judgment reported at AIR 2005 SC 242 [National Institute of Mental Health & Neuro Sciences vs. C. Parameshwara] in support of the proposition that the inherent powers of the court under Section 151 cannot be exercised so as to nullify provisions of the Code of Civil Procedure. If the Code deals expressly with a particular matter, the provision should ordinarily be regarded as exhaustive.

8. Learned counsel for the opposite parties cites a judgment of a co-ordinate bench of this court, also relied on by the trial court, reported at 2012 (1) CHN (Cal) 300 [Joydev Das vs. Khandubala Das]. In the said judgment the learned Single Judge held that relief under Section 151 of the Code is to be granted only if:

- (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 parties suffering the injury.

9. It was held further by the learned Single Judge that, without appreciation of the evidence that the parties could lead, it seemed to be impossible for the trial court to return a specific finding that the petitioner therein indeed indulged in acts of commission amounting to violation of or disobedience to the order of injunction and/or there was an attempt to violate/disobey. Since the trial court did not specifically record such finding but proceeded to order police help merely by relying on the allegation made by the opposite party no. 1 therein, it was held that circumstances justifying exercise of inherent power were not present. A party to the lis, it was held, ought not to suffer an order merely on the allegation made by the other party in the absence of proof of facts alleged.

10. It was also held in the said judgment that Section 151 of the Code was not to be resorted to when the Code provided a remedy for the aggrieved party. An order of injunction, if not complied with or obeyed by a party bound by such order, might be executed in terms of Section 36 of the Code read with Order XXI Rule 32 thereof. Also, the party complaining of violation or disobedience might pursue the remedy under Order XXXIX Rule 2A of the Code. However, it was also held that an aggrieved party might not have immediate relief by pursuing the remedy of execution and that although Order XXXIX Rule 2A dealt with the subject of imposition of penalty, it did not provide any relief to the party in whose favour the court had passed the order.

11. Upon hearing learned counsel for both sides, it is seen that the trial court proceeded on a fundamental misconception of law and misinterpretation of the cited judgment in holding that the parties to the suit may invoke the provision of Order XXXIX Rule 2A of the Code of Civil Procedure for getting justice, by relying on the judgment reported at 2012 (1) CHN (Cal) 300. In fact, the contrary view was taken in the said judgment, wherein the learned Single Judge had found that the remedy under Order XXXIX Rule 2A could not provide immediate relief to the party complaining of violation and as such, in appropriate cases, as specified in the reported judgment, the court could grant relief under Section 151 of the code.

12. Even on the count of non-maintainability of Section 151, the impugned order runs contrary to all the judgments cited by the parties. It is well-settled that the court can set right a wrong committed by a party in violating an injunction order by not only directing implementation of the order by police help, but in cases even by directing restoration of the suit property to the condition which it was in, previous to such violation.

13. As regards the judgment of the Supreme Court, cited by the opposite parties, the same does not apply to the present case, since there is no specific provision providing for adequate remedy of police help to implement an injunction/status quo order in the Code of Civil Procedure and the only recourse that could be taken was to invoke the inherent power of court under Section 151 of the Code of Civil Procedure.

14. Even if it had been a case of wrong caption, the trial court refused to exercise jurisdiction vested in it by law in dismissing the police help application only on such ground, instead of invoking the proper provision which was available according to it.

15. As such, the impugned order cannot stand a moment's scrutiny.

16. Accordingly, C.O. No. 4296 of 2018 is allowed on contest, thereby setting aside the impugned order and directing the trial court to take up for hearing the application of the petitioners for police help under Section 151 of the Code of Civil Procedure afresh and, upon giving opportunity of hearing to both sides, to dispose of the same on merits and in accordance with law.

17. There will be no order as to costs.

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