

(2017) 10 CAL CK 0001
In the Calcutta High Court
Case No : 18322(W) of 2016

S.A. Sabir & Associates

APPELLANT

Vs

The State of West Bengal & ors.

RESPONDENT

Date of Decision : 01-10-2017

Acts Referred:

Constitution of India, Article 226, Article 227 - Power of High Courts to Issue certain writs - Power of superintendence over all courts by the High Court
Code of Civil Pro

Citation : (2017) 10 CAL CK 0001

Hon'ble Judges : Dipankar Datta

Bench : SINGLE BENCH

Advocate : Saptanshu Basu, ?U. N. Betal, ?Mrityunjoy Chatterjee, ?Amitesh Banerjee, ?Tarak Karan, ?Ratnanko Banerji, ?Kuldip Mallik, ?Sayantan Das, ?P.P. Biswal

Final Decision : Dismissed

Judgement

1. The petitioner, as plaintiff, instituted a civil suit against the respondent no. 4, the sole defendant, for permanent injunction to restrain the defendant from entering into a cold storage without the permission of the plaintiff and also from creating disturbance/obstruction in the running of the cold storage. Upon hearing an application for temporary injunction, the trial court by an order dated September 13, 2011 restrained the defendant in the suit from dispossessing the plaintiff from the suit schedule property illegally or entering upon the suit schedule property without the permission of the plaintiff.

2. A miscellaneous appeal was presented by the defendant questioning the order of injunction. Upon hearing the parties, the appellate court allowed the appeal on December 12, 2011 by modifying the order of injunction. The parties to the suit were required to maintain status quo in respect of the suit property "as it was continuing till filing of the suit and till final disposal of the case".

3. A civil revisional application under Article 227 of the Constitution, brought before a coordinate Bench by the defendant, did not result in any alteration of the order of status quo. Such application was disposed of by the coordinate Bench on February 5, 2013 expressing hope and trust that the trial court would make sincere endeavour to dispose of the suit as expeditiously as possible, preferably within six months from date of communication of the order without granting unnecessary adjournments.

4. A petition dated May 8, 2013, was moved by the plaintiff before the trial court under section 151 of the Code of Civil Procedure (hereafter the CPC). Such petition was disposed of on January 8, 2014 by the trial court on contest. The Inspector-in-charge, Arambagh Police Station was "directed to provide police help and protection over the suit property as and when requisitioned by the plaintiff in discharging his duties in terms of injunction order passed by the courts as well as provide same police protection when there arises any scope of deterioration of law and order in respect of the suit property".

5. In this writ petition dated August 30, 2016, the plaintiff/petitioner seeks an order on the Superintendent of Police, Hooghly, and the Officer-in-Charge, Arambagh Police Station to take appropriate steps to render police assistance for protection of the lives of the petitioner's staff as well as its property.

6. The order of the appellate court dated December 12, 2011 disposing of the miscellaneous appeal, inter alia, records as follows: "It is admitted fact that the Appellate/Defendant is the owner of the property and also Chairman of the cold storage.

So, being the owner of the property/Chairman, the right, title and interest and possession always in hands of the Appellant.

Being owner/Chairman of the property, the Appellant has right to enter in his property, that entry can not (sic cannot) be a un lawful (sic unlawful).

In the above sense, the restraining order of the Court below against the defendant/Appellant "not to enter in the property without permission of the plaintiff" will go against the right of owner in property.

So, the balance of convenience is also in favour the Appellant/Defendant and in such a case to maintain status quo will be justified in present case till disposal the case.

So, in the above fact and circumstances, the court below does not consider the right of owner/Chairman in property."

7. The status quo that the appellate court intended to preserve till the disposal of the suit is incomprehensible. Although the appellate order was under challenge before a coordinate Bench and the revisional application was disposed of without interfering therewith, it is clear that the present proceeding is an attempt by the petitioner to drag the court of writ in a dispute between private parties, civil in

nature, by camouflaging the challenge as one directed against police inaction.

8. Be that as it may, it is noticed that before passing the order for police assistance on the petition under section 151 of the CPC, the trial court did not record any satisfaction that the order of status quo was being violated by the defendant. In the absence of any such satisfaction being recorded, the order is ab initio defective.

9. This Bench in its decision reported in 2012 (1) CHN (CAL) 300 (Joydev Das v. Khandubala Das), laid down a proposition of law, reading as follows: ".....in appropriate cases where (i) facts are not disputed, 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 demands 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 rights."

10. Concurrence of such view is found in a decision of a coordinate Bench [cor.: Hon"ble Subhro Kamal Mukherjee, J. (as His Lordship then was)] dated October 3, 2013 passed in C.O. 2282 of 2013.

11. Writ remedy, being a discretionary remedy, the Court ought to be satisfied to the hilt that the order which is sought to be implemented by extending police assistance does not suffer from any glaring defect. Any and every order passed by a civil court granting police assistance, even though not disturbed by a superior court, may not call for its implementation by issuance of a writ in exercise of jurisdiction under Article 226 of the Constitution if there are circumstances that would justify the writ court to stay at a distance and to leave the parties to work out their remedy before the civil forum.

12. In that view of the matter, I decline interference. The writ petition is dismissed, without order for costs.

13. It shall, however, be open to the petitioner to seek whatever relief is available to him by approaching the appropriate civil court which, it is needless to observe, shall decide the issues before him uninfluenced by dismissal of this writ petition. Urgent photostat certified copy of this judgment and order, if applied, may be furnished to the applicant at an early date.