

(2001) 08 CAL CK 0069
In the Calcutta High Court
Case No : C.O. No. 2098 of 1993

Sisir Kumar Deb and Another

APPELLANT

Vs

National Techno Institution

RESPONDENT

Date of Decision : 17-08-2001

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 115

Citation : (2002) 1 CALLT 156

Hon'ble Judges : Prabir Kumar Samanta, J

Bench : Single Bench

Advocate : Animesh Kanti Ghosal and S.K. Bhattacharyya, for the Appellant;
Sabyasachi Bhattacharjee, for the Respondent

Final Decision : Allowed

Judgement

P.K. Samanta, J.—This revisional application is directed against an appellate order dated 22nd June, 1993 thereby affirming the order passed by the learned trial court directing the plaintiff petitioner to make arrangement for normal supply of water to the tenanted portion of the defendant in the suit premises and to maintain supply of water till the disposal of the suit.

2. The suit is for eviction under the provisions of the West Bengal Premises Tenancy Act. For the purpose of disposal of the said petition for injunction filed by the defendant opposite party, a local commission was held. From the report, as submitted upon such local commission, it did not appear that the plaintiff petitioner interfered with the supply of water in the disputed premises since after the institution of the suit. The said report further revealed that the water pipe-line running through the bath-rooms and the privy of the disputed portion was lying in broken condition. The defendant alleged in his petition for injunction that the water was being carried to the roof of the suit premises by a mechanical pump from an underground storage tank. The said report also did not disclose the existence of any underground storage tank or any tank in the ground floor. The defendant opposite party also did not produce any material to establish that

supply of water in the tenanted premises was in existence at the time of induction of the tenancy or that the same was interfered with any time since after the induction of the tenancy. It was also not established in course of hearing that since when such supply of water, if there be any, in the tenanted premises was interfered with by the plaintiff/petitioner, as the said report clearly revealed that the water pipe-line was lying in a broken condition. The defendant also could not establish by any manner whatsoever as to when the said pipe-line was broken.

3. Both the courts below passed the order in the form of a mandatory nature directing the plaintiff petitioner to restore supply of water in the tenanted premises only upon presumption that since the monthly rental was at the rate of Rs. 3000/- per month, so it was necessarily with the facility of supply of water in the disputed premises. That apart, the impugned order of injunction as made by both the Courts below needs constant supervision by the Court for its compliance and/or implementation. It is settled principle of law that the court would not pass any interim order for whose implementation a constant supervision by the Court is necessary. In view of the aforesaid materials on record and more particularly in view of the fact that no materials were produced before the Court to establish that regular and normal supply of water was in existence in the tenanted premises at the time of induction of the tenancy, I am of the view that both the Courts below acted illegally and with material irregularity in its exercise of jurisdiction in passing the above order for injunction which was in the form of a mandatory order. Therefore, the impugned order is set aside.

4. Accordingly, this revisional application is allowed.

5. However, this order will not prevent the tenant defendant opposite party to apply for abatement of rent if it is established that there was normal supply of water at the time of induction of the tenancy or that the tenancy agreement was with the conditions of regular supply of water in the tenanted premises, if it is also made clear that the tenant defendant opposite party in any event will be entitled to have a separate supply of water in his tenanted portion independently without any interference by the plaintiff petitioner.

Let urgent xerox certified copy of this order be given to the learned advocates for both parties as early as possible.