

(2019) 05 CAL CK 0039

In the Calcutta High Court

Case No : Civil Order/Misc. Cas No. 1907 Of 2018

Sri Nirmal Kumar Saha Vs State Bank Of India & Ors?

Date of Decision : 17-05-2019

Acts Referred:

Constitution Of India, 1950 — Article 227

Citation : (2019) 05 CAL CK 0039

Hon'ble Judges : Subhasis Dasgupta, J

Bench : Single Bench

Advocate : Kishore Mukherjee, Tarak Nath Halder

Judgement

Subhasis Dasgupta, J

The impugned order dated 3rd May, 2018, passed by Learned Civil Judge (Junior Division), 3rd Court, Sealdah in Title Suit No.109 of 2004, rejecting the application dated 17.5.2017 filed by the petitioner/defendant praying for repairing is the subject of challenge in this revisional application under Article 227 of the Constitution of India.

Learned advocate for the petitioner submitted that learned court below proceeded to reject the application dated 17.5.2017, proposed for undertaking plastering as well as repairing work simply to protect the suit building situated in 'B' schedule property from being further dilapidated and/or damaged, merely looking at the 'B' schedule property appended in schedule to the plaint without considering the averment contained in para '2' of the plaint showing existence of an incomplete pucca structure situated in 'B' schedule property. Thus, learned court below acted without his jurisdiction in a most improper manner, while rejecting the prayer incorporated in the petition dated 17.5.2017 causing serious prejudice to petitioner/defendant.

It was contended that for the ensuing rainy season the suit building constructed long before should be allowed to undertake plastering work, both inside and outside, together with necessary repairing simply to make it habitable in order to meet up crisis of accommodation for the family members of defendant residing in

the ground floor of the suit building pertaining to 'B' schedule property.

Learned advocate for the opposite parties/plaintiffs controverting the submission raised by the petitioner/defendant submitted that in view of the order passed by the learned court below disposing of the injunction application on 22.1.2017 directing both parties to maintain status quo with respect to nature, character and possession of the suit property described in the schedule of the plaint till disposal of the suit, the proposed plastering work together with repairing, if allowed, would be in clear violation of the injunction order, already granted by the learned court below and in that event complication will be invited causing delay in the disposal of the pending suit, which admittedly is appearing at the peremptory hearing stage.

It was further contended by the learned advocate for the opposite parties that illegal construction was undertaken in the suit property, for which Municipality issued notice upon the petitioner requiring petitioner to remove the construction, already undertaken in violation of the sanctioned plan.

Argument was raised by learned advocate for opposite parties with emphasis that when the petitioner had already suffered injunction for the last 11 years, the proposed plastering together with repairing work should not be undertaken pending adjudication of the suit. Taking such grounds learned advocate for the opposite parties sought for dismissal of the revisional application.

The order impugned has two components, one dealing with rejection of an application dated 17.5.2017 praying for proposed plastering together with repairing work in respect of the suit building situated in 'B' schedule property, and while another dealing with an application filed by the plaintiff praying for appointment of the Local Investigation Commissioner. The prayer of the defendant was rejected, while that the prayer of the plaintiff seeking local investigation was allowed. The petitioner felt aggrieved with the rejection of petition dated 17.5.2017 proposing to undertake plastering together with repairing work in respect of the suit building situated in 'B' schedule property.

Only point requires to be addressed by this Court is whether the petitioner may be allowed to undertake proposed plastering work, both inside and outside, in respect of unfinished constructed first floor of suit building, found in 'B' schedule property in order to make it habitable, what could not be finished for the last 11 years having suffered an order of injunction passed by the learned trial court or not.

Plaintiffs/opposite parties filed a suit for permanent as well as mandatory injunction against the defendant claiming his right, title and interest over the suit property inclusive of 'B' schedule property, which the plaintiffs claimed to have acquired by inheritance from the erstwhile owner, who was favoured with a patta in the year 1975 by Revenue Rehabilitation Department, Government of West Bengal. The stand of the defendant is that he is the actual owner of the suit property and the ground-floor of the suit building was constructed long before

and further that first floor was constructed in 'B' schedule property over the ground-floor of the existing building having obtained sanctioned plan in the year 2004. The basic construction was completed in the year 2004, soon after obtaining sanctioned plan. The purpose of undertaking plastering work together with required repairing is to make the building safe from being further dilapidated. From the photographs enclosed with the revisional application, it appears that first floor construction goes unfinished including necessary plastering work, both inside and outside of the constructed first floor building together with carrying out required finishing work to make it habitable. In the petition itself praying for undertaking plastering together with required repairing work, nothing was specifically mentioned as to the extent of plastering work, to be undertaken together with finishing work need to be performed or not under the behest of undertaking plastering and repairing work. The instant prayer for undertaking proposed plastering together with repairing was not preceded by any report of Local Inspection Commission in order to reveal the extent of masonry work inclusive of plastering needed for making the building safe and also from being worn out.

True it is that in the schedule of the property, shown in 'B' schedule, appended to the plaint, nothing was mentioned therein as to the existence of an unfinished two-storied building, if any situated in the 'B' schedule property, but the reference of which may be found in the averment contained in para '2' of the plaint. The existence of an unfinished first floor constructed building, situated in 'B' schedule property, might have escaped the notice of Learned Trial Court, but even taking note of such fact, the situation would not have been improved to a great extent, favourable to the purpose of petitioner. But the more important fact to be kept in mind is that injunction application was disposed of in the year 2007 directing both the parties to maintain status quo in respect of nature, character and possession of the suit land involved in this case, and what is operative for the last 11 years. When such building in 'B' schedule property exists having suffered injunction for last 11 years and when the suit is appearing at the peremptory hearing stage, the Court is of the view that pending adjudication of the suit, the defendant should not be indulged in undertaking proposed plastering together with repairing work simpliciter to make the unfinished structure of first-floor of the suit building complete and habitable. The proposed plastering work together with required repairing appears to have been made simply to meet up the crisis of accommodation keeping in view the requirement of the family members of the defendant, which seems to be more apparent, than to protect the building from being dilapidated. As has already discussed that the petition seeking proposed plastering together with repairing work was not supported by any Learned Inspection Commissioner's report, the extent of repairing needed thus, could not be satisfactorily established.

The revisional application fails being without any merits.

The impugned order dated 3rd May, 2018, passed by Learned Civil Judge (Junior

Division), 3rd Court, Sealdah in Title Suit No.109 of 2004 rejecting the application dated 17.5.2017 filed by the petitioner/defendant praying for undertaking plastering together with repairing work does not call for any interference.

Learned court below is directed to dispose of the suit expeditiously as possible, keeping in view the long pendency of the case without granting any unnecessary adjournment, unless it is unavoidable giving sufficient opportunity of hearing to either of the parties involved in this case.

With this direction/observation, the revisional application stands disposed of.

Urgent certified photostat copy of this order, if applied for, be given to the parties as expeditiously as possible on compliance of all necessary formalities.