

**T.S. No. 526 of 2022**

**Order No. 10 Dated 17-08-2023**

Today is fixed for hearing of the application under Order 7 Rule 11 CPC filed by the plaintiff to the counterclaim of the defendant and the petition under Section 151 CPC filed by the defendant.

The defendant has prayed for filing written objection to the application under Order 7 Rule 11 CPC filed by the plaintiff. Prayer is allowed.

The defendant also filed an application under Order 6 Rule 17 CPC praying for amendment of the written statement along with counterclaim. Copy is served. The plaintiff prays for time for filing written objection. Prayer is allowed.

It appears that the plaintiff has filed written objection to the applications under Section 151 CPC filed by the defendant. Copy is served.

Both the plaintiffs and the defendants file memo of appearance.

Ld. Advocate for the plaintiffs and the defendants are present.

Heard both the application under Section 151 CPC filed by the defendant.

**The salient features of the defendant's application under Section 151 CPC:**

1. Defendant's claim that there is possession of the schedule B property by the plaintiff is creating obstruction in obtaining separate electric connection in the suit property.
2. The defendant No. 1 made application for electric connection and meter but the plaintiff has filed written objection and CESC Ltd. did not install new electric meter.
3. The defendant was informed that unless proper regarding installation of electric connection and meter is brought from the court, the CESC Ltd. will provide new electric meter connection over schedule B property.
4. The defendant submits that the plaintiff is replying on the order of ad-interim injunction and made objections to obtaining new electric meter and connection by the defendant.
5. Thus, the defendant No. 1 has prayed for granting permission to him to obtain new electric connection from CESC.
6. The defendant has also submitted that they are in possession of schedule B property but the plaintiff is creating obstruction in peaceful enjoyment of the suit property.
7. The defendant submit that they have the right to use common areas of schedule A property but the plaintiff is forcefully restraining them from using common area of schedule A property.
8. The plaintiff is taking advantage of the existing ad-interim order of injunction and obstructing the defendant in each and every manner which is unlawful and arbitrary.
9. Thus, the defendant has prayed for permission to allow them to use the stair and roof of schedule A property and to install common lock in the collapsible gate.

The defendant has relied on the judgement passed by the Hon'ble High Court at Calcutta in WPA No. 10534 of 2020 dated 24.12.2020.

### **The written objection of the plaintiff:**

1. The plaintiff submits that the defendant is illegal occupier and trespasser in respect of schedule B property and are not entitled to call upon the plaintiff for permission to supply the electricity in terms of the provision laid down under the Electricity Act.
2. The defendants are not entitled to have permission from CESC Ltd. till they can establish themselves as lawful occupant of the schedule-B property.
3. The plaintiff has pointed out that as per Electricity Act 2003, the defendants are entitled to get supply of electricity since they are illegal occupier and trespassers. According to electricity Act only the lawful occupant of the schedule property can have permission for supply of electricity from CESC Ltd. A trespasser cannot be a statutory amenities and facilities.

The plaintiff has relied upon the judgement passed by the Hon'ble High Court at Calcutta in:

2006 AIR (Calcutta) 73  
1995 (1) Cal. H.C.N. 533  
2008 AIR (Calcutta) 29  
2008 AIR (Calcutta) 19

### **The object and purport of section 151 CPC.**

The purpose of Section 151 CPC is to invoke the inherent power of the Court to make orders as may be necessary for the ends of justice or to prevent the abuse of process. Although such a provision is worded broadly, courts have tempered the provision to limit its ambit to only those circumstances where certain procedural gaps exist, to ensure that substantive justice is not obliterated by hyper technicalities.

The Hon'ble Apex Court in **Padma Sen Vs State of UP AIR 1961 SC 2018** laid down that "inherent powers of the court are in addition to the powers specifically conferred on the court by the code. They are complimentary to those powers and therefore it must be held that the court is free to exercise them for the purposes mentioned in section 151 of the code when the exercise of those powers is not in any way in conflict with what has been expressly provided in the code or against the intention of the legislature. It is also well recognized that the inherent power is not to be exercised in a manner which will be contrary to or different from the procedure expressly provided in the code."

Again, in **Ram Prakash Agarwal VS Gopi Krishna (2013) 11 SCC 296** the Hon'ble Apex Court held that "section 151 CPC is not a substantive provision that confers the right to get any relief of any kind. It is a mere procedural provision which enables a party to have the proceedings of a pending suit conducted in a manner that is consistent with justice and equity."

"Inherent powers under section 151 CPC can be exercised by the court to redress only such a grievance, for which no remedy is provided for under CPC."

The present application under Section 151 CPC is required to be examined in the light of the observations of the Hon'ble Apex Court. The facts and circumstance giving rise to the application is that the defendant's supply of electric connection has been frustrated by the objection raised by the plaintiff. Furthermore, the defendant access to certain portions of schedule A property has been obstructed by the plaintiff.

Now, when the application of the defendant No. 1 with respect to electric connection is perused it can be found that the CESC Ltd. has asked for production of documentary evidence at its office. And that CESC Ltd. intended to carryout inspection at the specified address of the applicant. Thus, it appears that the electric supply company is still in the process for providing electric connection to the defendant over schedule B property. It is the applicant who has to produce his own documents before the electricity supply company on which he is relying for his connection. No point has been raised yet by the electric supply company as to whether the applicant is a occupier, unauthorized occupant, lawful occupier or trespasser with respect to the schedule property over which electric connection is suppose to be allotted. Points have been raised by both the parties in support of their individual case that an unauthorized occupant or a mere possessor is not entitled to electricity connection or that even an trespasser is entitled to electricity unless evicted. However, it appears to this court, that electric supply company has not put up such legal jargons of convolutions before either parties as a non-est condition for supplying electricity.

Also that the defendant has prayed for relief on the ground that he is not provided access to schedule A property. However, if one has to fall back upon the temporary order injunction passed by this court on 03.05.2023 it is to be found that both the parties are to maintain status quo as regard nature, character and possession of the suit property. The defendant has already admitted that they are in possession of schedule B property but is now wanting access to schedule A. This is not in tandem with the sole of the order passed by this court on temporary injunction.

Furthermore, on perusing both the applications under Section 151 CPC, it appears that such applications are not for enabling a party to have the proceedings of a pending suit conducted in the manner consistent with justice and equity.

An application under section 151 CPC shall be allowed after a lot of circumspection only in those cases where is no other report to relief for the petitioner. But in case where the law provides other reliefs the aggrieved should take such recourse. In this instant case, it appears that the law provides express provision of relief to the aggrieved. Thus, the aggrieved should seek relief under provision of law.

Hence, it is

ordered

that both the prayers of the defendant under section 151 CPC filed on 03.05.2023 stands rejected on contest.

Fixing **19-12-2023** for hearing of the application under Order 7 Rule 11 CPC, Order 6 Rule 17 CPC and filing of written objection.

***Civil Judge (Sr Div), 2<sup>nd</sup> Court, Barasat***  
***JO Code WB 01009***