

T.S 215/20 CNR – WBCC01-004570-2020

Present: Sri Jayanta Koley, Judge, Bench-II. (WB00562)

Order 25
05.09.23

Today is fixed for hearing the application of the plaintiffs dtd 17.5.22 u/s 151 CPC.
Both the sides file hazira.

As by the application u/s 151 CPC the plaintiffs have prayed for recalling the order no 18 dtd 19.4.22 passed in this suit, whereby the ad-interim order of temporary injunction passed on 13.2.20 was vacated, on the grounds stated in the said application, has got direct nexus with the application of the plaintiffs for temporary injunction filed in this suit, the injunction application along with the application u/s 151 CPC filed by the plaintiffs are taken up together for consideration on consent of both the sides.

Perused the application for temporary injunction filed by the plaintiffs on 12.2.20 praying for passing an order restraining the defendant / his men / agents / servants from disturbing the plaintiffs in their peaceful user and enjoyment of the suit premises mainly on the grounds that though they are premises tenants in respect of the suit premises as the defendant accepted rent from them upon issuing rent receipt in the name of their predecessor in interest, who was the original recorded tenant, till the month of July 2019 and are in actual physical possession and enjoyment of the suit premises, yet the defendant along with his men / agents / associates are creating disturbances in their peaceful possession and enjoyment of the suit premises and are trying to dispossess them therefrom otherwise than in due process of law.

The defendant has not filed any written objection against the injunction application but he is contesting the suit by filing his written statement along with counter claim with a specific plea that the plaintiffs are trespassers in respect of the suit premises as after the death of the original recorded tenant, the present defendants have lost their right to enjoy the same in any manner as per the provisions of section 2(g) of the WBPT Act 1997.

Upon considering of the respective stands of the parties in this suit and having regard to the respective submission of their Ld. Counsels, it appears to be the admitted position that the plaintiffs are in actual physical possession of the suit premises though the status in which they are occupying the same is under dispute, which can at best be adjudicated at the time of trial of this suit on the basis of evidence to be adduced by the parties but not at this stage. In order to have the disputes between the parties resolved once for all there is necessity to have early commencement of trial of this suit. However till the final fate of this suit is arrived at on the basis of evidence to be adduced by the parties, I feel that there is every necessity to protect the possession of the plaintiffs in the suit premises in order to avoid any possible complication and / or confusion being sprung up before commencement of trial of this suit.

Considered as such, the plaintiffs' application u/o 39 Rule 1 and 2 read with section 151 CPC dtd 12.2.20 is thus disposed of by directing both the parties to maintain status quo in respect of possession over the suit premises as on this date till the final disposal of this suit.

The application of the plaintiffs u/s 151 CPC is thus also disposed of accordingly in tune with the above order.

Fix 05.10.23 for framing of issues.

D/C by me

Judge 2nd Bench

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