

The Court of the Civil Judge (Jr. Divn.), Bidhannagar
Present: Dhruvajyoti Bhattacharyya, Civil Judge(Jr. Divn.), Bidhannagar
J.O.CODE WB 1177
T.S. 319/2023 CIS No. 319/2023
WBNP18-000428-2023

Order dt. 29.09.2023.

The record is put up today. An application has been preferred u/s 151 of CPC by the plaintiff praying for direction upon the Officer-in-charge of Nimta Police Station to ensure the order delivered by this Court on 05.09.2023 is complied with and not violated.

The crux of the application is that this Court had delivered an ad interim order delivered on 15.09.2023 whereby the defendants were restrained from causing disturbance to the peaceful right or possession of the plaintiff over the suit property. Since the delivery of the order, the defendants have violated the order of injunction and has made construction which is illegal.

Plaintiff has prayed for a direction upon the Officer-in-charge of Nimta Police Station to take necessary steps to protect the spirit of the order of injunction.

Defendants are yet to appear before this Court.

The Court has heard Ld. Counsel for the plaintiff. Ld. Counsel for the plaintiff who has produced certain computer generated photographs and had submitted that the defendants need to be restricted at once from committing the breach of the order of injunction.

This Court has perused the record. The ad interim order of injunction has been delivered by this Court u/o XXXIX Rule 1 of CPC preventing the right of peaceful enjoyment of the plaintiff over the suit property. The allegations in the application under determination amounts to disobedience of the said order which amounts to necessary legal action u/o XXXIX Rule 2A of CPC which empowers this Court to order the property of *'the person'* guilty of such disobedience or breach to be attached and may also order such person to be detained in civil prison for a term not exceeding three months. In view of such specific provision of the statute this Court does not have scope to utilize its inherent power u/s 151 of CPC. Moreover, the application under determination is replete with factual allegations veracity whereof us required to be tested on the anvil of examination and cross examination. This Court finds it expedient to direct the Sheristadar of this Court to undertake necessary action to initiate a separate miscellaneous proceeding on the basis of the said application in terms of Order XXXIX Rule 2A of CPC read with Rule 776 (a) of Civil Rules and Orders of Calcutta High Court.

Hence it is,

O R D E R E D

that the application application u/s 151 of CPC filed by the plaintiff on 29.09.2023 be and the same is directed to be considered and treated as an application under Order XXXIX Rule 2A of CPC and separate miscellaneous proceeding under Rule 776 (a) of Civil Rules and Orders of Calcutta High Court is hereby directed to be initiated. Sheristader is hereby directed to take necessary steps. Todate.

Civil Judge (Jr. Divn.),
Bidhannagar