

Kanak Kumar Bar and anr. Vs. State of West Bengal and ors.

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Court : Kolkata

Decided On : Jun-05-1996

Reported in : (1996)2CALLT418(HC),100CWN744

Judge : Satyabrata Sinha and ;Satya Narayan Chakrabarty, JJ.

Acts : [Code of Civil Procedure \(CPC\) , 1908](#) - Section 151 - Order 39, Rule 2A; ;
[Constitution of India](#) - Article 226; ;Contempt of Courts Act

Appeal No. : Suit No. 1558 of 1996

Appellant : Kanak Kumar Bar and anr.

Respondent : State of West Bengal and ors.

Advocate for Def. : Abhas Dasgupta and ;Dipti Dasgupta, Adv.

Advocate for Pet/Ap. : Saumyabrata Mukherjee, Adv.

Disposition : Appeal dismissed

Judgement :

Satyabrata Sinha, J.

1. This appeal is directed against an order dated 6.5.96 passed by B.P. Banerjee, J in CO. No. 6499(W) of 1996 whereby and whereunder His Lordship has dismissed the Writ application filed by the petitioners in limine.

2. The fact of the matter lies in a very narrow compass.

3. There exists a dispute as regard operation of fishery by and between the petitioners and the private respondents. The appellants have filed a suit and obtained an Interim order of injunction against the said private respondents. As the private respondents had allegedly not been obeying the said order of injunction, the petitioner filed an application for grant of Police help. By order dated 19.3.96 the learned Munsif, 3rd Court at Basirhat in purported exercise of his jurisdiction under Section 151 CPC directed the Officer-In-Charge, Sandeshkali Police Station to see that the order passed by the said Court is strictly obeyed. According to the petitioners, despite communication of the said order no action has yet been taken by the Officer-In-Charge of the said Police Station.

4. The writ petitioner, therefore, filed the aforementioned writ application, Inter alia, for issuance of a Writ of or in the nature of mandamus directing the Officer-in-Charge to implement the said order passed by the learned Munsif. Before the learned Trial Judge, the learned Counsel for the petitioner has placed reliance upon a decision in the case of R. Audemma v. P. Narastmham reported in : AIR 1971 AP53 and Sunil Kr. Haider v. Nishikanta Bhandari reported in : AIR1983 Cal266 wherein it has been held that the Civil Court has jurisdiction to pass such order in exercise of its jurisdiction under Section 151 of the Code Civil Procedure.

5. It is neither in doubt nor in dispute that the petitioners' main grievance is against the private respondents. The dispute is a private dispute. The petitioner have already obtained an order of injunction. Even assuming that the contention of the learned Counsel for the petitioner to the effect that the learned Munsif had jurisdiction to pass the said order dated 19.3.96, we are of the opinion that no writ application will be maintainable for enforcement of the said order. This Court in exercise of its writ jurisdiction under Article 226 of the [Constitution of India](#) cannot function as an executing Court. It is now well-known that this Court does not interfere in a private dispute. Reference in this connection may be made to : [1992]3SCR904 (Bishnu Pada Khanra v. State) and 1995(2) CLT, 235 (Monordas Shah v. State).

6. It is now well-known that two parallel proceedings cannot run simultaneously. Reference In this connection may be made to : [1977]2SCR137 .

7. We may however observe that the petitioners have alternative remedy both under Order 39 Rule 1A CPC so far as the private respondents are concerned as also under the provision of the Contempt of Courts Act so far as the Officer-in-Charge of the aforementioned Police Station is concerned. This observation may not be treated to mean that the respondents have violated the order. We have observed only for the purpose of pointing out that petitioners have alternative and efficacious remedy. Moreover in the event the petitioners succeed in the contempt proceeding, there cannot be any doubt whatsoever that the Civil Court in exercise of its jurisdiction ' under Section 151 CPC as well as this Court under the Contempt of Courts Act can pass requisite consequential order putting the parties to the same position as if the order of injunction has not been violated provided such an order is possible to be passed.

8. The learned Counsel for the appellants contends that there is an apprehension that the fishery is to be looted. If this is the position, the petitioners may also be at liberty to move before the appropriate authority for taking appropriate action as against the concerned persons in accordance with law.

9. For the reason aforementioned, there is no merit in this appeal which is accordingly dismissed along with the application for interim order.

There will be no order as to costs.

S.N. Chakrabarty, J.

10. I agree.