



IN THE HIGH COURT OF ORISSA AT CUTTACK

C.M.P. No.140 of 2023

(An application under Article 227 of the Constitution of India)

Sayed Ekram Saha

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Petitioner

-Versus-

Haroon Khan & Others

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Opp. Parties

Advocate(s) appeared in this case:-

For Petitioner : Mr. P.K. Satapathy, Advocate

For Opp. Parties : Mr. P.K. Khuntia, Advocate

CORAM:

JUSTICE SASHIKANTA MISHRA

JUDGMENT

12th December, 2025

SASHIKANTA MISHRA, J.

The petitioner's prayer to provide police assistance for implementation of the interim order having being refused by the Trial Court, he has approached this Court in the present application filed under Article 227 of the Constitution of India.



2. Short facts of the case are that the petitioner is the plaintiff in C.S. No.607 of 2021 in the Court of learned Civil Judge, (Jr. Division), Bhadrak filed by him for partition and permanent injunction claiming 1/3rd share of the suit property. The plaintiff claims to be in possession of a specific portion of the suit land occupied by him as per mutual arrangement and convenience of the parties, though the property has not yet been partitioned by metes and bounds. For necessity, the plaintiff began constructing a house. At the time of casting of the roof, the present Opposite Party-defendant raised serious objection and did not allow him to proceed with the construction and also threatened to demolish the half-constructed building.

3. Since the efforts of the plaintiff for amicable settlement and partition of the property did not yield any result, he was constrained to file the suit. In view of the impending threat of demolition of the half-constructed house, the plaintiff also filed an application for injunction being I.A. No.1 of 2022 in the suit under Order XXXIX Rules 1 and 2 of CPC.



4. After hearing learned counsel for the parties, the trial Court, by order dated 11.05.2022 allowed the application by temporarily restraining the defendants from creating any disturbance and permitted the plaintiff to construct the house. The plaintiff thereafter, proceeded to cast the roof of the house sanctioned under Pradhan Mantri Awas Yojana (PMAY) as financial assistance had already been released in his favour. But on 24.07.2022, the defendants created serious disturbances and did not allow the plaintiff to raise construction. The plaintiff approached the I.I.C., of Tihidi Police Station seeking protection and implementation of the order but the I.I.C., refused as no communication had been made to it by the civil Court. Under such circumstances, the plaintiff filed an application registered as CMA No.179 of 2022 under Section 151 of CPC, with prayer to direct the I.I.C of Tihidi Police Station to render assistance to him at the time of construction work and roof casting of the house. Said application came to be rejected by order dated 16.12.2022, which is impugned. Be it noted that, being aggrieved by the order of injunction passed against them,



the defendants have preferred an appeal being F.A.O. No.48 of 2022 before the learned District Judge, Bhadrak.

5. Heard Mr. P.K. Satapathy, learned counsel appearing for the Plaintiff-Petitioner and Mr. P.K. Khuntia, learned counsel appearing for the Defendant-Opposite Parties.

6. Mr. Satapathy would argue that the Court below rejected the petition on untenable grounds without appreciating the fact that the same runs contrary to the spirit of the order of injunction already passed by it. Further, the reasoning adopted by the Court below that police assistance cannot be sought for to implement an order of injunction, as it is an extreme step and can be permitted only if the party does not have any remedy, is completely erroneous. Mr. Satapathy also argues that the provision Order XXXIX Rule 2-A of CPC is not a sufficient remedy as even if an order is passed in favour of the plaintiff under the said provision, it would be of no help to him as the order of injunction would remain unimplemented.



Mr. Satapathy has relied upon some judgments in support of his contention, which shall be referred to and discussed later.

7. Per contra, Mr. Khuntia would argue that if the plaintiff is aggrieved by the alleged violation of the order of injunction, he can file application under Order XXXIX Rule 2-A. The CPC nowhere provides for rendering of police help for implementation of the order of the Court. It is an extreme step which is not to be exercised by the Court routinely.

8. Having heard learned counsel for the parties at length, this Court deems it proper to first refer to the order passed by the trial Court allowing the application for injunction, the operative portion of which reads as follows:-

“The I.A. be and the same is allowed on contest against the Opposite Parties, but under the circumstances without any cost. Opposite Parties are temporarily restrained from creating any disturbances in the construction work of house standing over the suit land and petitioner is permitted to construct house over suit land of this I.A. subject to filing of specific undertaking to the effect that the petitioner will not change the nature and character of the suit land by making any other construction, petitioner will not claim any equity over the portion of suit land over which he is allowed to construct house in future and petitioner will not cause any inconvenience to other co-sharers.”



9. It is significant to note that the aforesaid order was passed on consideration of the fact that all the three ingredients namely, prima facie case, balance of convenience and irreparable loss, were found to be in existence and in favour of the plaintiff. The trial Court also referred to the work order issued by the BDO in favour of the plaintiff and observed that if the half-constructed house remains in that stage, it will not be beneficial to either party. This implies that the trial Court was subjectively satisfied that an order restraining the defendants from creating disturbance in the construction work was necessary to be passed and along with it a positive order permitting the plaintiff to construct the house was also passed.

10. Coming to the impugned order, it is seen that the trial Court appears to have been swayed away by the fact that (i)an appeal against the order of injunction is pending; (ii)the plaintiff had not applied for local inspection under Order 39 Rule 7 and (iii)the remedy for violation of an order of injunction lies under Order 39 Rule 2-A.



11. As regards pendency of the appeal preferred by the defendants against the order of injunction, it is to be noted that the same is obviously an appeal filed under Order XLIII Rule 1(r). Rule 2 provides that the rules of Order XLI shall apply to appeals under Order XLIII. Relevant portion of Rule (5) of Order XLI reads as follows:-

“5. Stay by Appellate Court.—(I) An appeal shall not operate as a stay of proceedings under a decree or order appealed from except so far as the Appellate Court may order, nor shall execution of a decree be stayed by reason only of an appeal having been preferred from the decree; but the Appellate Court may for sufficient cause order stay of execution of such decree.”

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12. Thus, mere filing of an appeal cannot and does not operate as a stay of the order appealed against. So, merely because the order of injunction has been challenged before the higher forum does not, *ipso-facto*, mean that the order appealed against no longer exists, unless of course an order of stay operation of the same has been passed. In the instant case, the impugned order does not mention if any order of stay was passed by the appellate Court, nor has anything been placed before this Court to suggest that operation of the order of injunction has been suspended.



This Court therefore, holds that pendency of the appeal in the facts and circumstances, shall have no bearing on the application seeking police assistance.

13. Coming to the ground that the plaintiff has not applied for local inspection under Order XXXIX Rule 7, this Court fails to understand as to how the same is relevant.

Order XXXIX Rule 7 reads as follows:-

“7.Detention, preservation, inspection, etc., of subject-matter of suit-

(1)The Court may, on the application of any party to a suit and on such terms as it thinks fit.-

(a)make an order for the detention, preservation or inspection of any property which is the subject-matter of such suit, or as to which any question may arise therein;

(b)for all or any of the purposes aforesaid authorize any person to enter upon or into an land or building in the possession of any other party to such suit; and

(c)for all or any of the purposes aforesaid authorize any samples to be taken or any observation to be made or experiment to be tried, which may seem necessary or expedient for the purpose of obtaining full information or evidence.

(2)The provisions as to execution of process shall apply, mutatis mutandis, to persons authorized to enter under this rule.”

14. The question of detention, preservation and inspection etc., of the suit property is not in the least involved. Therefore, reference to the provision by the trial Court is fallacious.



15. The next ground cited by the trial Court in the impugned order is existence of alternative remedy in the form of an Order 39 Rule 2-A of CPC. The provision is quoted below for immediate offence:-

“[2-A. Consequence of disobedience or breach of injunction.-(1)In the case of disobedience of any injunction granted or other order made under rule 1 or rule 2 or breach of any of the terms on which the injunction was granted or the order made, the Court granting the injunction or making the order, or any Court to which the suit or proceeding is transferred, may 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 the civil prison for a term not exceeding three months, unless in the meantime the Court directs his release.
(2)No attachment made under this rule shall remain in force for more than one year, at the end of which time, if the disobedience or breach continues, the property attached may be sold and out of the proceeds, the Court may award such compensation as it thinks fit to the injured party and shall pay the balance, if any, to the party entitled thereto.]”

16. Undoubtedly, creation of disturbance by the defendants in the construction work would amount to violation of the order of injunction but then, the question that needs to be answered is whether the provision would be sufficient as a remedy. True, the CPC does not specifically provide for police assistance for implementation of the order of the Court but the power under Section 151 of CPC is wide enough to be exercised for protection of the



rights of the parties if the available provisions are found to be inadequate. In the case of **Meera Chauhan V. Harsh Bishnoi & Another 2007 (12) SCC 201** the Supreme Court held as follows:-

“18.At the same time, it is also well settled that when parties violate order of injunction or stay order or act in violation of the said order the Court can, by exercising its inherent power, put back the parties in the same position as they stood prior to issuance of the injunction order or give appropriate direction to the police authority to render aid to the aggrieved parties for the due and proper implementation of the orders passed in the suit and also order police protection for implementation of such order.”

17. In the case of **Gokula Naik V. Pitambar Naik & Others 2022 (II) OLR 965** a co-ordinate Bench of this Court referring to **Meera Chauhan (Supra)** held as follows:-

“8.4. Further, the Court has to see the parties to the proceeding should respect the order of the Court. In the instant case, parties are directed to maintain status quo over the suit property. Hence, the Court has to see that the order of status quo passed by it is respected by the parties. A relief under Order XXXIX Rule 2-A C.P.C. may not be sufficient in all cases to mitigate the loss suffered by a party due to evaluate the grievance of the petitioner vis-à-vis the loss likely to be suffered, if timely intervention is not made to see that the order of status quo is implemented. On perusal of the impugned order under Annexure-4, it appears that this material aspect was not taken into consideration by learned trial Court while adjudicating the petition under Section 151 C.P.C. in C.M.A. No.112 of 2021



18. Similar view was taken by the co-ordinate Bench in the case of ***Smt. Manoj Manjari Mohapatra & Another V. Sri Kapila @ Kapilendra Mohapatra & Another (CMP No.128/2021)***.

19. Thus, the settled position of law is that directing police assistance would undoubtedly be an extreme step but then if the situation so warrants, the Court can exercise such power.

20. Coming to the facts of the present case, as already stated, besides restraining the defendants from creating disturbance, the trial Court also passed a positive order permitting the plaintiff to construct the house in question. As long as the plaintiff is unable to construct his house, the order of the trial Court would be rendered ineffectual. It is the duty of the Court to ensure that the fruits of the order passed by it are actually reaped by the party for whom it is intended. Otherwise, the order would be rendered a dead letter. This would militate against the fundamental canons of justice, as, despite a favourable order, the party concerned would be deprived from its benefits. The trial Court appears to have proceeded on a misconceived notion



and in the process, has reduced itself to a mute spectator, while its order remains unimplemented.

21. For the foregoing reasons therefore, this Court is of the considered view that the impugned order cannot be sustained in the eye of law.

22. In the result, the CMP is allowed. The impugned order is set aside. The trial Court is directed to direct the concerned police authority to render all assistance to the plaintiff in construction of his house as per order dated 11.05.2022 passed in I.A. No. 1 of 2022.

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Sashikanta Mishra,
Judge

High Court of Orissa, Cuttack
The 12th December, 2025/ Puspanjali Ghadai, Jr. Steno