2014
High Court, Appellate Side,
Calcutta

No. 1096-A   **Dated, Calcutta the 06th March, 2014**

From: Sri Debi Prosad Dey,
        Registrar (Judicial Service),
        High Court, Appellate Side,
        Calcutta.

To: **1. All the District Judges of West Bengal, including the A & N Islands**
       2. The Chief Judge, City Civil Court, Calcutta
       3. The Chief Judge, Presidency Small Causes Court, Calcutta

      Sub: Direction of the Hon'ble Court passed in W.P. 2906(W) of 2014 (Jamaluddin Mondal Vs. The State of West Bengal & Ors.)

Sir/Madam,

I am directed to forward herewith a copy of the Order dated 07.02.2014, passed by the Hon'ble Justice Dipankar Datta in the above-referred matter for your information and with the request to circulate the same among all the Judicial Officers, presiding over Civil Courts under your judgeship for their guidance and future reference.

                          Yours faithfully,

Enclo: As stated.   **Registrar (Judicial Service)**

Seen. Circulate among all the Ld. Judicial Officers.

7.3.14.

Noting by Office or Advocate	Serial No.	Date	Office notes, reports, Orders or proceedings with signature
	29 Sc	7.2.14	

W. P. No. 2906 (W) OF 2014

Jamaluddin Mondal
-vs.-
State of West Bengal & Ors.

Mr. Partha Pratim Roy
....For the Petitioner.

Ms. Chama Mookherji
Ms. Paromita Pal.
....For the *Official* Respondents.

An application under Order 39 Rules 1 and 2 of the Civil Procedure Code (hereafter the CPC) read with Section 151 thereof filed by the petitioner in connection with a suit instituted by him was disposed of by the learned Civil Judge on 29th November, 2012 by passing the following order:-

' That the prayer of the plaintiff for temporary injunction under order 39 rule-1 read with section 151 CPC, is considered and allowed on contest and hence ordered that the both the parties to the suit are to maintain status quo, in the suit property with regard to possession, nature and character as of this day till the disposal of the suit.

The petition under order 39 rule-1 read with section 151 CPC is thus disposed of.'

Alleging violation of such order by the defendants in the suit, who are the private respondents here, the petitioner applied under Section 151 of the CPC for police help before the said learned Judge. By order dated 25th April, 2013, a report was called for from the local officer in-charge, which he was required to file by the next date on the point as to whether there is violation of the order dated 29th November, 2012.

Noting by Office or Advocate	Serial No.	Date	Office notes, reports, Orders or proceedings with signature

The petitioner alleges that taking advantage of non-filing of report by the police before the learned Judge, the private respondents looted the paddy standing on the land in question. It is also alleged that in the process, they assaulted the petitioner and the police has remained a silent spectator.

Apprehending breach of peace as a result of the above overt acts, the petitioner approached the Executive Magistrate under Section 144, Code of Criminal Procedure and by an order dated 4th November, 2013, the local officer-in-charge was directed to ensure that the order of *status quo*, passed in the suit, is complied with by the parties.

Grievance voiced by the petitioner in this writ petition is that no action is being taken by the police and the order of injunction that was passed on the application has been rendered totally frustrated. A direction is prayed for by the petitioner on the police to ensure that the order of *status quo* is not violated by the private respondents.

Time and again, the Supreme Court and this Court have deprecated the practice of judicial officers, presiding over the civil courts, passing orders of *status quo* without indicating the status of the property that is sought to be preserved. Reference in this connection may be made to the decisions reported in **(2006) 3 SCC 312** and **2009 (4) CHN 670**.

If the civil court is *prima facie* convinced that *status quo* regarding possession of the suit property should continue till disposal of the suit, a finding ought to be recorded as to who between the plaintiff or the defendant is in possession. In the event the presiding officers cannot conclusively decide on affidavit evidence as to who is in possession, they ought to examine the issue judiciously and decide, in their discretion, what order would serve the

Noting by Office or Advocate	Serial No.	Date	Office notes, reports, Orders or proceedings with signature

interest of justice best at the interlocutory stage. However, if a *prima facie* view is formed that the plaintiff is in possession, there could be no impediment to restrain the other party from disturbing or interfering with such possession by passing appropriate order of restraint. In the absence of *prima facie* satisfaction of the plaintiff being in possession, the prayer for injunction could be rejected. However, passing an order of *status quo* without indicating the status amounts to a convenient short-cut procedure to dispose of the application which cannot be encouraged at any cost.

If *status quo* of the nature and character of the suit property has to be preserved till disposal of the suit, the condition thereof obtaining on that date must be indicated, or else the presiding officers themselves would not be in a position to decide at a later stage of the proceedings as to what the nature and character of the suit property was, on the date the order was passed.

Unfortunately, the civil courts continue to pass such vague orders of *status quo,* which in turn unnecessarily generate further litigations. The presiding officers of the civil courts must remember that passing such vague orders of *status quo* do not result in any effective service being rendered to the litigants. Instead of advancing the cause of justice, it becomes largely a farcical exercise with the litigants filing one petition after another, not knowing where to seek justice.

The present case is no exception. Not having indicated the status of the property that was required to be preserved, the civil court has directed the local officer-in-charge to indicate in the report to be filed pursuant to the order dated 25th April, 2013 as to whether there has been any violation or not. For all practical purposes and

Noting by Office or Advocate	Serial No.	Date	Office notes, reports, Orders or proceedings with signature

intents, it would indeed be difficult, if not impossible, for the police to give an accurate picture of the position of the property in dispute as it stood on the date *status quo* was ordered. I hope and trust that the presiding officers of the civil courts shall be more cautious in future and abstain from passing vague orders of *status quo*.

Be that as it may, a direction upon the police to ensure that the private respondents do abide by the order of *status quo*, for similar reasons, would be a direction having the possibility of generating further litigation. I am of the view that no such order as prayed for by the petitioner ought to be passed on this writ petition and he ought to be granted the liberty to apply before the civil court under Section 36 of the CPC.

The writ petition stands dismissed, with liberty as aforesaid. There shall be no order as to costs.

Needless to observe, the police shall ensure that the dispute between the private parties does not breach peace and tranquility at the locale and that law and order is strictly maintained to prevent physical harm being caused to any one.

Registrar (Judicial Service) is directed to circulate this order for future guidance of the judicial officers presiding over civil courts.

Urgent photostat certified copy of this order, if applied for, be furnished on priority basis.

Sd/-

(Dipankar Datta, J.)