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IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

ORDER
IN

S.B. Civil Writ Petition No. 3784/2008

Kuber Choudhary S/o Kalyan Choudhary and
Another

Versus

Civil Judge (Jr.Div.) Sawai Madhopur and Others

Date of Order ::: 31.07.2008

Present

Hon'ble Mr. Justice Narendra Kumar Jain

Shri Shaillesh Prakash Sharma, Counsel for
petitioners

Shri Girish Khandelwal, Advocate, for

Shri Vishwas Mittal, Counsel for respondents

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By the Court: -

The matter has come-up for orders on the application under Article 226 (3) of the Constitution filed on behalf of the respondents but, during the course of arguments, the learned counsel for both the parties contended that the writ petition itself may be heard and disposed of finally. The prayer is allowed. The writ petition itself is taken up for hearing.

Admit.

Heard learned counsel for the parties.

The plaintiff-respondents filed a suit for permanent injunction against the defendants in the trial court along-with the application for temporary injunction, which was allowed vide order dated 19th January, 2008. The

defendants were restrained to the effect that during the pendency of the suit they will not operate the mobile tower installed over the disputed plot No.7, Patel Nagar 'C', Sawai Madhopur. Being aggrieved with the same, the defendants preferred an appeal before the District Judge, which is pending. The interim stay was not passed by the first appellate court in appeal, therefore, the plaintiffs moved an application in the trial court under Section 151 CPC contending therein that in spite of injunction order the defendants are operating the tower over the disputed plot, therefore, they may be restrained from doing so with the aid of police. During the pendency of that application, the learned counsel for the defendants contended orally before the court below on 4th April, 2008 that they will remove the tower from the disputed plot. The said order dated 4th April, 2008 is under challenge in this writ petition preferred on behalf of the defendants No.2 and 3.

The learned counsel for the defendant-petitioners contended that the counsel, who appeared on behalf of the defendants before the trial court, did not make there any request orally to remove the tower from the disputed plot, therefore, the said fact has wrongly been

mentioned in the order dated 4th April, 2008 by the trial court. He, therefore, contended that the said order may be set-aside.

During the course of arguments, the learned counsel for the petitioners admitted that he has not filed affidavit of the concerned Advocate, who appeared on behalf of the defendants before the trial court on 4th April, 2008 to the effect that no such request was made by him in the trial court. In absence of any such affidavit, the contention of the learned counsel for the petitioners cannot be appreciated in this Court.

In view of the above, I do not find any merit in the writ petition. The order passed by the trial court dated 4th April, 2008 does not call for any interference by this Court.

The writ petition is, therefore, dismissed with no order as to costs.

It will be open for the defendants to move an application before the concerned court along-with an affidavit of the concerned Advocate to the effect that no such request was made on behalf of the defendants and, in case, the application is filed by them then the same will be decided by the trial court in accordance with the law.

In view of the above, there is no need

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to pass any order on the application filed by the respondents under Article 226(3) of the Constitution, and the same also stands disposed of.

(Narendra Kumar Jain) J.

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