



ORDER BELOW EXH.5 IN R.C.S. NO.403/2025

(CNR No.MHBI11-002017-2025)

Heard Ld. Advocate for the plaintiff. Perused the plaint and application for temporary injunction.

2] It is the case of the plaintiff that the defendant is carrying out illegal construction over his plot, due to which his easementary right as to light and air is being frustrated. Hence, he prayed for relief in the nature of *ex-parte ad-interim* injunction in his favour.

3] At this juncture it would be proper to rely on the guidelines given by the Hon'ble Apex Court in **(Morgan Stanley Mutual Fund Vs. Kartick Das, 1994 AIR SCW 2801)** while granting *ex-parte ad-interim* injunction. The factors which should weigh with the Court in the grant of *ex-parte* injunction are :

- (a) where irreparable or serious mischief will ensue to the plaintiff;
- (b) whether the refusal of *ex parte* injunction would involve greater injustice than the grant of it would involve;
- (c) the court will also consider the time at which the plaintiff first had notice of the act complained so that the making of improper order against a party in his absence is prevented;
- (d) the court will consider whether the plaintiff had acquiesced for some time and in such circumstances it will not grant *ex parte* injunction;
- (e) the court would expect a party applying for an *ex parte* injunction to show utmost good faith in making the application;
- (f) even if granted, the *ex parte* injunction would be for a limited period of time;
- (g) General principles like *prima facie* case, balance of convenience and irreparable loss would also be considered by the court.

4] The present suit is for declaration and perpetual injunction as well as mandatory injunction against the defendant. At this juncture, after giving thoughtful consideration to the documents filed by the plaintiff, submissions made by Ld. Counsel on behalf of plaintiff and after applying the above guidelines of the Hon'ble Supreme Court, the plaintiff has failed to bring forth any immediate particular instance or evidence for granting *ad-interim ex-parte* injunction. Hence, it would not be proper to grant *ad-interim ex-parte* injunction against the defendant. Moreover, the rejection of *ad-interim ex-parte* injunction will not ensue irreparable or serious mischief to the plaintiff. Hence, it would be necessary to hear the defendant before granting injunction against him.

5] Thus, at this point the plaintiff has not made out sufficient grounds for granting *ex parte ad-interim* temporary injunction in his favour. Hence, I do not find any extreme urgency to grant *ex-parte ad-interim* temporary injunction against the defendant. Plaintiff's prayer for injunction can be considered after the defendant is

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heard. Hence, following order is passed :

ORDER

1. Issue show-cause notice to the defendant as to why *ex-parte ad-interim* injunction prayed by the plaintiff shall not be granted.
2. Emergent process and Special Bailiff, if required, be provided on request.

Sd/-

Date : 16.06.2025

Place : Georai

(H.M. Momin)

2nd Jt. Civil Judge, Junior Division,
Georai

CERTIFICATE

I affirm that the contents of this P. D. F. file are same, word to word, as per the original Judgment/Order.

Dictated on :- 16/06/2025
Transcribed on :- 16/06/2025
Checked & Signed on :- 16/06/2025

Sd/-
(P.B. Kusumkar)
Stenographer G-3, Georai.