

**IN THE COURT OF DISTRICT & SESSIONS JUDGE, BANKURA**

**Present: Sri Manojyoti Bhattacharyya, (WB00392)**

**District & Sessions Judge, Bankura**

**Miscellaneous Appeal No. 16 of 2024**

**Registration no: 16/2024**

**CNR No. WBBK01-002100-2024**

**Filing no. 383/2024**

**Order no. 08**

Dated. 30.01.2025

Today is fixed for order regarding stay petition dated. 22.08.2024 filed by the appellants/defendants.

The instant Miscellaneous Appeal has been preferred by the defendants/appellants against the Order no. 16 dated 23.07.2024 passed by Ld. Civil Judge, (Junior Division), 1<sup>st</sup> Court, Bankura in connection with Title Suit No. 329 of 2023, wherein the learned Civil Judge, (Junior Division), 1<sup>st</sup> Court was pleased to pass an order of temporary injunction and directed both sides to maintain *status quo* till disposal of the suit.

Defendants/Appellants case in brief is that:

Respondant/Plaintiff filed the Title suit against the present appellants/defendants stating *inter-alia* that plaintiff purchased the 'Ka' schedule property from Nayantara Mondal vide registered deed of sale no. 1006 of 1990. After purchasing the 'Ka' schedule property the plaintiff recorded her name in the L.R. Record-of-Rights. It is admitted that 'Kha' schedule property belonged to the defendants which is situated adjacent south to the 'Ka' schedule property and the defendants purchased the 'Kha' schedule property from Nayantara

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Mondal and Madanmohon Mondal. It is stated that the defendants have been constructing a multi-storied building without having any sanction plan. Further the plaintiff submits that the defendants started the constructing work by encroaching the 'Ga' schedule property which is situated towards the southern side of the Ga' schedule property. It is stated that as the defendants have been making the constructing work encroaching the 'Ga' schedule property which is passage, the plaintiff has been facing various problems in enjoying the 'Ga' schedule property. So, Respondent/Plaintiff filed the petition for injunction and Ld. Court below after careful scrutiny passed injunction order against the present appellants/defendants.

Being aggrieved and dissatisfied by the impugned order the appellants/defendants has preferred the instant Miscellaneous Appeal.

During pendency of the appeal, appellants/defendants have filed the present stay petition. Respondent/plaintiff has contested the stay petition by filing W.O.

Ld. Advocate for the appellants has stated that for halt of development work the defendants have faced huge financial loss day by day. There is sanction plan. Already building was partly constructed up to second floor. No property of plaintiff was encroached. The four feet passage of plaintiff remain free. The boundary on the back side which is curved and under possession of the defendants was actually leaving some land of the defendants which was originally maintained as toilet and mentioned in the sale deed. Plaintiff has actually claimed this curved portion to create a false case.

Ld. Advocate for the respondent/plaintiff has stated that the main disputed portion, i.e, on the southern side, the defendants have

constructed the building without leaving mandatory four feet gap. Ld. Court has rightly passed the order of injunction after perusal of inspection report.

Considered the documents filed by both sides.

It is undisputed that the building was constructed leaving four feet passage of the plaintiff's house. It is also undisputed that on the frontal part where the boundary was running straight the building was constructed leaving four feet gap. The back side part of the building was closed to boundary which was turning inside to the land of the defendants. Defendants claimed after showing his deed that this turning portion is nothing but the toilet he used as mentioned in the deed. That toilet was broken for the construction wall. The four feet passage in that area adjacent to the house of the plaintiff also remained free. Considered the aforesaid circumstances, I think there is a *prima facie* case to adjudicate. I have also considered that a reasonable part of the building was already completed. It is not the case of the plaintiff that any building construction was raised in his land. The case of the plaintiff, is that, the mandatory gap between the boundary wall and the building was not maintained in the back side. I think in such a case without going through the trial any blanket order of injunction may create irreparable injury to other side.

If the plaintiff is correct, then the defendants have to demolish the portion of the building which if constructed illegally. If defendants are correct then any order of injunction will not doubt create day to day financial loss in an under construction building which would be irreparable injury. I think it is a fit case where stay order should be granted.

Hence, it is,

**Ordered**

that the order no. 16 dated 23.07.2024 passed by Ld. Civil Judge, (Junior Division), 1<sup>st</sup> Court, Bankura in connection with Title Suit No. 329 of 2023 is hereby stayed until further order.

Call for TCR.

Fixed 01.03.2025 for Trial Court Record.

Send a copy of this order to the Ld. Civil Judge, (Junior Division), 1<sup>st</sup> Court, Bankura for information and necessary compliance.

*Dictated & Corrected by me*

Sd/-  
(Manojyoti Bhattacharyya)  
District Judge, Bankura

Sd/-  
(Manojyoti Bhattacharyya)  
District Judge, Bankura

IN THE COURT OF DISTRICT & SESSIONS JUDGE, BANKURA

Memo No. / dated,

Copy of the order forwarded to the Ld. Civil Judge, (Junior Division), 1<sup>st</sup> Court, Bankura for information and necessary compliance.

(Manojyoti Bhattacharyya)  
District Judge, Bankura

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