

**T.S. no. 886 of 2021 (C.N.R. no. WBCC01-003283-2021)**

**Present: Bivas Pattanayak, Judge, Bench-II (WB-01050)**

**Order No. 2 dated 21.08.2021**

This is a suit for declaration, permanent injunction filed by the plaintiff along with a prayer for temporary/ad-interim injunction under Order 39 Rule 1 and 2 read with Section 151 of the Code of Civil Procedure.

It is endorsed that no caveat has been filed.

Learned Advocate moves the prayer for ad-interim injunction of the plaintiff-petitioner.

Issue notice calling upon the defendants-opposite parties to show-cause within 15 days from the date of receipt of notice as to why the prayer for temporary injunction shall not be allowed.

The brief fact of the case is that the plaintiff-petitioner is a monthly tenant under the defendants in respect of one shop-room on the ground floor of premises no. 138, Arabindo Sarani, P.S. - Burtalla, Kolkata-700 006, morefully described in the schedule to the application, at a monthly rental of Rs. 400/-. Further, it is contended that the plaintiff-petitioner is in khas possession of the aforesaid suit premises and has been carrying on the business of "goat meat shop" since long under valid license from the concerned authority. Furthermore, it is contended that the defendants intended to develop the property at the suit premises by making new building upon demolishing the existing structure and the plaintiff-petitioner gave consent for building, re-building with a condition to reinstate in the said tenancy to the extent of accommodation of 138 sq. ft. in the new building. The plaintiff-petitioner also came to learn that a new building is going to be constructed in the suit premises vide sanctioned plan being no. 2016020012 dated 29.09.2016 and further it came to his knowledge that the portion where is going to be reinstated is not as per sanctioned plan. It is further contended that the defendants are trying to construct the building illegally by making a staircase within the proposed possession of the tenanted portion of the plaintiff-petitioner on the southern side. Furthermore, the plaintiff-petitioner in relation to the aforesaid, lodged a complaint before the Kolkata Municipal Corporation as his right, title, interest and possession over the schedule property has been clouded. In the above premises, the plaintiff-petitioner has

prayed for an order of temporary/ad-interim injunction restraining the defendants from disturbing the peaceful use and enjoyment of the plaintiff-petitioner to the extent of 138 sq. ft. in the suit premises and making illegal construction beyond the sanctioned plan granted by Kolkata Municipal Corporation.

In support of the application, the petitioner – plaintiff has filed photocopies of following documents:

- i. Rent receipt.
- ii. Written complaint before Commissioner, Kolkata Municipal Corporation and Executive Engineer, Borough – II.
- iii. Certified copy of enlistment.
- iv. Certified copy of sanctioned plan.

Learned Advocate for the plaintiff-petitioner submits that as the plaintiff-petitioner is in possession of the suit property, hence, his possession should be protected against any illegal eviction and it is settled principles of law that one should not be evicted otherwise than by due process of law. Further, he submits that in the event of any building, re-building the plaintiff-petitioner is to be shifted to a suitable accommodation and after completion of the construction work, he is to be reinstated in his tenanted portion and in support of his contention, he relied on the decision of Hon'ble Apex Court passed in **Kusum Devi versus Mohan Lal (Dead) by Lrs.** Reported in (2009) 11 Supreme Court Cases 594.

Upon going through the averments made by the plaintiff-petitioner, it appears that he gave consent for such work of building/re-building to be undertaken by the defendants on condition that he will be reinstated to the the extent of 138 sq. ft. in the tenanted portion and further that the defendants gave undertaking that plaintiff-petitioner shall be reinstated to the extent of 138 sq. ft. in the tenanted portion. However, no such copy of consent or undertaking of the defendants or any agreement by and between the parties has been filed by the plaintiff-petitioner to primarily show of such agreed terms of reinstatement to the extent of 138 sq. ft. in the tenanted portion. As regards, the decision of Hon'ble Apex Court passed in **Kusum Devi (supra)**, it is found that the suit was for eviction on the ground of *bonafide* need for residential purpose and for carrying out repairs, which is different from the facts of the case in hand. In view of the above, the prayer for ad-interim injunction stands 'refused'.

To 29.09.2021 for S/R, A/D, appearance and show-cause.

*Dictated & corrected by me:*

Sd/-

**Judge, Bench-II**  
**21.08.2021**

Sd/-

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**21.08.2021**