

Order 2  
14.07.23

The record is put up today on the basis of a petition filed on behalf of the plaintiff who files 2 separate applications – one under order 39 Rule 1 and 2 read with section 151 CPC and the other under Order Rule 7 CPC.

Ld. Advocate for the plaintiff moves both the applications for passing an interim orders. Heard the Ld. Advocate for the plaintiff. Perused the applications filed by the plaintiff.

So far as the application under Order 39 Rule 1 and 2 read with section 151 CPC is concerned it appears that by the said application the plaintiff has prayed for passing an interim order of temporary, mandatory injunction directing the defendant to open the suit room for inspection and to give access to the plaintiffs for the purpose of repairing as well as for ascertaining the damage caused to the room for not using the same and keeping the same under lock and key on the ground that the defendant is a tenant in respect of the suit premises under the plaintiff where the defendant used to run his business of jewellery shop. The defendant kept the suit premises under lock and key for the last 5 years or so thereby causing damage to the same and despite repeated requests the defendant did not give any access to the plaintiff who reside on the 1<sup>st</sup> floor which is correspondingly above the suit premises and as such the plaintiff reasonably apprehended that the 1<sup>st</sup> floor rooms may fall down at any point of time for not undertaking any repair work in the suit premises which is over 100 years old. Even on 17.4.23 a portion of beam in the outer wall continued from the defendant's tenancy fell down wherefrom it is reasonably apprehended that the said beam must have damaged inside the suit rooms which is holding the ceiling touching first floor under the occupation of the plaintiff. The defendant has not also paid any rent since November 2021 for which the plaintiff issued notice of eviction and regular suit for eviction will be filed by the plaintiff in due course.

For all these reasons the plaintiff has filed this suit and came up with the prayer for passing an interim order of temporary mandatory injunction as stated above as well as for appointment of an Advocate commissioner to hold commission work in the suit premises according to the points mentioned in the related application.

Considered submission of the Ld. Advocate for the plaintiff. Perused both the applications and the documents relied upon. It appears that the instant suit is one for declaration and injunction which was filed on 26.06.23 and the summons of this suit have already been issued upon the defendant. The date is fixed for appearance of the defendant on 17.8.23. In view of the above position I am of the considered opinion that without waiting for the result of the summons issued upon the defendant it will not be at all just, wise and proper to pass any blanket interim order of temporary mandatory injunction as prayed for by the plaintiff while question of inspection of the suit premises does not arise at this stage when admittedly the same is under lock and key. In such position I feel both the applications should be heard on merit in the presence of both the sides. Considered as such the prayer of the plaintiff for passing an interim order of temporary, mandatory injunction is considered and refused at this stage.

Issue notice upon the defendants at once asking him to showcause within 7 days of the receipt of notice as to why the prayer of the plaintiff for adinteirm order of temporary, mandatory injunction and local inspection commission shall not be allowed.

Fix 17.08.23 for S/ and A/D.

Requisites at once.

D/C by me

Judge 2<sup>nd</sup> Bench

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