

M.S. - 560/23 CNR – WBCC01-006949-2023

Present: Sri Jayanta Koley, Judge, Bench-II. (WB00562)

Order 03

25.06.23

The Ld. Advocate for the plaintiff moves the application under Order 39 Rules 1 and 2 read with section 151 CPC for an adinterim order.

It is reported from the office that no caveat is pending. Perused the endorsement of “no caveat has been filed” on the first page of the injunction application. Accordingly the application praying for an order of adinterim injunction is taken up for hearing.

Heard the Ld. Advocate for the plaintiff at length.

Issue notice upon the defendants, calling upon them to showcase within 15 days from the date of receipt of this notice as to why the temporary injunction shall not be granted against them.

Requisites have been put in.

In a nutshell, the case of the plaintiff is that he entered into an agreement dated 17.12.15 with the defendants for allotment of a shop room as described in the schedule A to the injunction application by way of lease at a consideration price of Rs. 6 lakhs, out of which the plaintiff has already made payment of a sum of Rs. 4,60,000/- on divers dates. Though as per the condition and obligations, the defendants were required to allot and deliver the possession thereof in favour of the plaintiff within a period of 8 months from the date of execution of the said agreement, but till date the defendants have not delivered the possession of the said suit room in favour of the plaintiffs despite repeated requests made by the plaintiff in that respect. Thereafter the plaintiff approached the defendants for refunding the said sum of Rs. 4,60,000/- when the defendants issued a cheque for the said amount which was dishonoured for the reasons which was well known to the defendants since prior to the issuance of the cheque in favour of the plaintiff thereby making their intention clear that they would neither deliver possession of the suit room nor return the money in favour of the plaintiff in any manner. Accordingly the plaintiff, finding no other alternative, has approached this court by filing this suit and the application for temporary injunction with prayer for an adinterim order of injunction restraining the defendants from selling / disposing / alienating / transferring or creating any third party interest in respect of the suit shop room in any manner.

Upon considering the submission made on behalf of the plaintiff and regard being had to the copies of documents relied upon, though it appears that an unregistered agreement was executed by and between the parties and the defendants also issued a cheque for a sum of Rs. 4,60,000/- in favour of the plaintiff which could not be encashed but at the same time, I find that the plaintiff has not sought for any relief in the shape of specific performance of contract in respect of the suit shop room without any explanation. That apart, the prayer made by the plaintiff in the plaint appears to be only refund of money advanced in favour of the defendants without seeking any relief in respect of the suit shop room.

In such position, I am of the considered opinion that the plaintiffs prayer for temporary injunction in respect of the suit shop room is not supported by any strong or cogent ground. Considered as such, I feel that the plaintiff has not been able to make out a good prima facie case and the balance or convenience and inconvenience does not tilt in his favour while I feel that no exigency is involved in this matter.

Accordingly, the prayer for an adinterim order of temporary injunction is considered and refused at this stage.

Fix 22.8.23 for S/R and A/D.

D/C by me

Judge

Judge 2nd Bench