

T.S. No. 1338 of 2023(CNR WBCC01-007009-2023)  
(Present : Sri S. Dasgupta, Bench-III (WB01246))

Order No. 22 / dated 02.09.2025

Today is fixed for further hearing of the petition u/s 151 of the CPC dated 10.02.2025 filed by the plaintiff.

Both parties file haziras.

Heard both sides in full.

Perused the instant petition and the written objection filed by the contesting defendant.

In the said petition dated 10.02.2025, the plaintiff has stated that as per the agreement dated 19.12.2017, it was agreed by the plaintiff and the defendant, that the developer shall complete the first phase of the development work within a period of 18 months plus 6 months, subject to delivery of vacant possession of occupied portion of the tenants of the back portion of the building at the said premises, and that the developer shall complete the 2<sup>nd</sup> phase within a further period of 18 months plus 6 months, subject to delivery of vacant possession of front portion within 30 days from the date of receipt of the notice from the landlord/lessees. The plaintiff has stated that the developer has agreed that the development work was to be completed within a total period of 48 months, subject to delivery of vacant possession. The plaintiff has further stated that it was also agreed by the defendant that the penalty for delay to hand over the room to the tenant to be paid Rs.1,00,000/- per month by the developer.

The plaintiff has stated that as the defendant could not hand over the said shop room by the present period that is by 48 months from the date of execution of the agreement, the plaintiff has prayed for a direction upon the defendant to pay Rs.1,00,000/- per month for delay to hand over the shop room to the plaintiff, during the pendency of the instant suit.

The contesting defendant has submitted that the prayer of the instant petition is basically the prayer (f) of the plaint is subject to adjudication after a complete trial in the instant suit, as because the said prayer is one of the final reliefs prayed for in the instant suit.

It appears that the defendant has not admitted in their written statement that the purported agreement between the plaintiff and the defendant is still subsisting, but instead, the defendant has stated in their written statement that the plaintiff has surrendered his tenancy on 29.03.2023 upon which the purported agreement dated 29.12.2017 referred to by the plaintiff has come to an end. It appears that the defendant has stated in their written statement that the purported agreement ceased to have any effect on and from 29.03.2023.

The facts and circumstances of the unreported Judgment cited by the plaintiff in support of his contentions do not match with those of the instant case and therefore, the same are not applicable in the instant case and do not come to the aid of the plaintiff in any way.

The defendant has relied on the ruling reported in (2003)6 SCC 65, in which the Hon'ble Supreme Court has held that :-

*Seen from any angle, we think the High Court has erred in granting the impugned relief to the respondent which in our opinion is in the nature of a final relief which on facts and circumstances of this case, without deciding the issues involved in the writ petition, could not*

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*have been granted.*

The defendant has stated that in an interlocutory petition, discretionary reliefs of a Court are prayed for by parties in aid of final relief, so that the parties are not displaced in their positions on the date of praying for such interlocutory reliefs. The defendant has submitted that these interlocutory reliefs are equitable reliefs but final reliefs are a matter of rights. As such, the defendant has stressed, a Court while granting interlocutory reliefs cannot grant final reliefs. The defendant has stated that as per the ruling of the Hon'ble Supreme Court cited by them, it would appear that at a stage of grant of interlocutory reliefs i.e. a relief which a Court grants as an equitable relief, Order for a final relief in the form of compensation/mesne profits, being a final relief and not an equitable relief, cannot be passed by a Court. As such, the defendant has emphasized that the instant petition under section 151 of the CPC should be rejected.

There has been no effective rebuttal to any of the above contentions of the defendant by the plaintiff.

Therefore, having heard the rival contentions of both the parties at full length, having carefully perused the instant petition filed by the plaintiff, the materials on record, having considered the submissions made by the Ld. Counsels appearing for the contesting parties, and taking into account the entire facts and circumstances, this Court is of the considered opinion that, no relief as prayed for, being in the nature of final relief can be granted to the plaintiff, at this interlocutory stage of the instant suit. In any case, all the points raised by the plaintiff in the instant petition can only be properly adjudicated at the end of a full and proper trial by recording evidence, oral as well as documentary, of both the parties, and not otherwise at this stage.

In view of the foregoing discussion, this Court is of the considered view that the instant petition filed by the plaintiff merits rejection.

Hence, it is

**ORDERED**

that the petition u/s 151 of the CPC filed by the plaintiff is hereby considered and **rejected on contest**, but without any cost, and accordingly disposed of.

Fix 25.11.2025 for framing of issues.

D/c by me

Sd/-

Judge, Bench-III  
City Civil Court, Calcutta.

Sd/-

Judge, Bench-III  
City Civil Court, Calcutta.