

Order No. 05 dated 21.7.25

Today is fixed for hearing of the injunction petition filed under Order 39 Rule 1 & 2 CPC.

Appellants have filed hazira.

The record is now taken up for hearing of the said injunction petition.

Ld Advocate for the appellants moved the said petition filed under Order 39 Rule 1 and 2 read with sec. 151 of the CPC in this case by the appellants praying for ad interim injunction and initially drew the attention of the following facts :

The petitioners i.e. the appellants are the joint owners of the A schedule property in Mouza Bhadrakali, P.S. Uttarpara as per their plaint filed in the Id trial court and they have entered into a registered development agreement with the developer who is the respondent No. 3 to develop their A schedule property and build a multi-storeyed building thereon. The B schedule property is the allocated portion of the flats in the proposed building of the appellants as per their development agreement with the respondent No.3 which has been handed over to the appellants by the proforma respondent after construction of the said developed building. The respondent No. 1 & 2 expressed their wish to purchase one dwelling flat out of the allocated B schedule property of the appellants which is mentioned in the plaint of the appellants as C schedule property before the appellants who also agreed to sell the same to them at an agreed sale consideration of Rs. 57,41,944/- and the said respondents paid a sum of Rs. 41,83,700/- to the appellants as earnest money/advance and the parties entered into an agreement for sale which was executed on 17.01.20 in which it was stipulated that the flat would be completed within 31.3.20 with a grace period of 3 months. Subsequently the respondent No. 1 approached the appellants for permission to occupy the said flat on temporary basis, as she urgently needed the same for her accommodation for easy communication to her work place and the appellants on good faith allowed the respondents to stay in the said flat as licensee on and from 10.4.20. The respondents thereafter have not made the balance payment of the said flat to the appellants and have not got the same registered but are enjoying the said C schedule flat in spite of the repeated requests of the appellants to do so. Thereafter the appellants found that the respondents have changed the nature and character of the said flat and have caused nuisance and annoyance therein and also damaged the same, due to which on 15.5.22 they revoked the license of using the said flat given to the respondents and directed them to vacate the said flat by the end of June 2022 but the respondents did not comply and have been staying in the said flat illegally as trespassers after expiry of the license. Thereafter the appellants have lodged criminal case against the respondent No. 1 & 2 which is pending for adjudication and the said respondents have filed a consumer case against the appellants before the Consumer court in Hooghly. The appellants also have bonafide requirement of the said flat for their own use and occupation due to which they lodged the instant suit for eviction of licensee, cancellation of the sale agreement and for permanent injunction against the said respondents. They have also filed the instant petition for temporary injunction.

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Misc. Appeal – 47/2025

J.O. Code : WB01302

Order No. 05 dated 21.7.25

Ld Advocate for the appellants while drawing the attention of this court to the annexed documents submitted that the appellants have a prima facie case for grant of such injunction and that the balance of convenience and inconvenience is also in their favour and that under the given circumstances the respondent No. 1 & 2 are required to be restrained with an order of injunction otherwise they would continue to damage the said flat and change its nature and character and cause nuisance and annoyance therein which would cause irreparable loss and injury to them.

Heard. Perused the filed documents and injunction petition. Considered.

It appears from the filed certified copy of the development agreement that a registered development agreement was executed between the appellants and the respondent No. 3 on 22.8.2013 for constructing a multi-storeyed building on the land of the appellants and for handing over the share of allocated flats to the appellants after construction of the said building as per their agreement for sale which allocated flats include the present flat in dispute being No. F-506 described in the injunction application at “C” schedule. It further appears from the filed agreement for sale that thereafter an agreement for selling the said flat was executed between the appellants and the respondent No. 1 & 2 on 17.01.2020 at an agreed sale consideration of Rs. 57,41,944/- with expected date of delivery of the said flat by the appellants to the said respondents/purchaser on 31.3.2020 with a grace period of 3 months. It further appears from the filed letter dated 28.11.2022 issued by the appellants to the said respondents, that the appellants have cancelled the said agreement for sale on the said day as the respondents have allegedly failed to pay the balance consideration money of Rs. 15,92,121.80 to the appellants and it appears from the said letter that the possession of the said flat was handed over by the appellants to the respondents in April 2020 on her plea for carrying out a puja therein, which the appellants by the said letter demanded handing back the said flat to them, which is further confirmed by the filed reply of the respondents to the appellants dated 03.01.2023. The submissions of the Ld Advocate as well as the materials in the present injunction petition show that the respondents are changing the nature and character of the said flat allegedly possessed by them which possession is a matter of dispute. Thus, it is apparent that the appellants have been able to make out a prima facie case of grant of ad-interim injunction upon the said flat. The appellants have also been able to show that the balance of convenience and inconvenience is in their favour as no inconvenience would be caused to the respondents if an injunction is issued in their favour, against the said flat as the respondents are already in possession of the same. The plea of the appellants that if the injunction is not granted in their favour, it may result in irreparable loss and injury to them is tenable as the respondents are allegedly changing its nature and character which would become different from the nature and character of the original flat after its construction by the respondent No. 3 and its subsequent alleged licensing to the respondents by the appellants. The appellants

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have also showed by the filed certified copy of the charge sheet of the criminal case lodged by them against the respondent No. & 2 that a criminal dispute is also underway between the parties with respect to this flat at the behest of the appellant.

Considering the matter, this court is of the opinion that the petitioners has been able to show a prima facie case of grant of temporary injunction upon the schedule C property, which considering the exigency of the matter, would be defeated by delay. Hence, the ad-interim prayer of the petitioners is herein allowed.

**The petitioners/appellants Malay Banerjee & Ors. do get an ad-interim injunction upon the suit Schedule C property mentioned in their application against the respondent No. 1 & 2 namely Moumita Biswas and Anubha Biswas.**

Both parties are directed to maintain status quo upon the said property till the disposal of the temporary injunction petition filed by the appellants herein which would be heard after granting opportunity to the respondents to contest the said prayer.

The respondent No. 1& 2 are directed not to make any construction in the said flat and/or change its nature and character and not to create any third party interests thereupon till the final disposal of this injunction petition.

I.C. Uttarpara P.S. is directed to ensure that status quo is maintained over the disputed property.

**Appellants are directed to comply with the provisions of Order 39 Rule 3 CPC.**

**Issue filed requisites at once.**

**Call for TCR at once.**

To 18.11.2025 for S/R and receipt of TCR.

Dict. & corr. By me.

Sd/-  
Addl. District Judge, 2<sup>nd</sup> Court,  
Serampore, Hooghly.

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Serampore, Hooghly.

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Addl. District Judge, 2<sup>nd</sup> Court,  
Serampore, Hooghly.

Memo No.....

Dated .....

Copy forwarded to : The I.C. Uttarpara P.S for information and necessary action.

Addl. District Judge, 2<sup>nd</sup> Court,  
Serampore, Hooghly.

