

MS (Com) – 117/2024

**Present: Rupanjana Chakrabarti
Judge, Commercial Court at Rajarhat,
North 24 Parganas**

**CNR: WBNP19-000032-2024
J.O Code.WB00612**

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05.04.2024

Today is fixed for SR/AD.

The SR/AD has not been received.

The learned Advocate for the plaintiffs is present and he has filed an application under Order 39 Rule 1 & 2 read with Section 151 of the Code of Civil Procedure praying for an ex-parte ad-interim order of injunction against the defendants.

The case of the plaintiffs/petitioners, in a nutshell, is that they carry on a business of developer and perform construction works with different authorities and parties. They had entered a development agreement with the defendants nos.1 to 4 in respect of a property situated at 164, Banerjee Para, P.O. – Shyamnagar, P.S. Jagatdal, Dist. North 24 Parganas for the purpose of construction of a multi-storied building therein. The initial agreement between the parties was entered on 20th September, 2012 followed by a supplementary agreement dated 30th May, 2014. A notarized Power of Attorney was executed by the defendant nos. 1 to 4 in favour of the plaintiffs on 20th September, 2012. However, the said defendants had subsequently unilaterally canceled the said Power of Attorney but the plaintiffs had incurred heavy expenses for the construction of the proposed building and allegedly, they had completed 40 per cent of the work at their own expense. It is also a contention of the plaintiffs/petitioners that they have provided consideration for purchase of 2 cottahs 7 chittacks and 34.27 sq. ft. of land of the concerned property while the rest portion i.e. 3 cottahs 14 chittacks and 11 sq. ft. thereof had been inherited by the defendant nos.1 to 4 from their predecessor. The plaintiffs could not complete the entire construction work due to unnecessary obstruction and disturbances in different ways made by the defendant/respondent nos.1 to 4. However, the said respondents have engaged the defendant nos.5 and 6 for completion of the construction work and having the rest portion of the work completed by the said defendants. They are now endeavouring to transfer the newly constructed flats to third parties to the prejudice of the plaintiffs. It is also

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a contention of the plaintiffs that both sides had earlier approached the learned Civil Court for declaration and injunction in respect of the concerned property and injunction order was granted to both sides by the learned Civil Court. Under such a state of affairs, the plaintiffs have prayed for an ex-parte ad-interim order of injunction against the defendants from restraining them from alienating, transferring, obstructing, creating third party interest over the concerned property and from harassing the plaintiffs/petitioners. The monetary claim made by the plaintiffs is a sum of Rs.1,39,60,000/- (rupees one crore thirty nine lakh and sixty thousand) along with interest.

Perused the plaint, the annexures to the plaint and injunction petition as well as the materials on record.

Heard the learned Advocate for the plaintiffs/petitioners.

Considering the facts and circumstances of the case it appears that the dispute between the two sides has been continuing since last several years and no such urgency has been made out to justify granting of an ex-parte ad-interim order of injunction prior to service of notice upon the opposite parties as per Order 39 Rule 3 of the CPC. Several questions of fact are involved involving the monetary claim made by the plaintiffs, which cannot be resolved without giving an opportunity of being heard to the defendant nos.1 to 4. The plaintiffs/petitioners have failed to establish a prima facie case for the grant of an ex-parte ad-interim order of injunction. The balance of convenience and inconvenience tilts against the plaintiffs/petitioners for passing an order of ex-parte ad-interim injunction as prayed for.

It appears that the plaintiffs/petitioners are not likely to suffer irreparable loss and injury if no ex-parte ad-interim injunction order is passed at this stage.

In view of the above, the prayer for ex-parte ad-interim injunction order is considered and refused.

Issue notice upon the defendants/respondents direction them to show-cause within 10 days from receipt as to why temporary injunction order shall not be granted.

Requisites at once.

To **02.05.2024** for SR/AD.

Sd/- Rupanjana Chakrabarti
Judge
Commercial Court,
Rajarhat, North 24 Parganas