

**MS (Com) – 117/2024**

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

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

**11**

**04.03.2025**

Both parties file haziras.

Today is fixed for passing order in respect of injunction application under Order 39 Rule 1 & 2 read with Section 151 of the CPC.

Perused the plaint, injunction petition, written objection, notes of argument as well as materials on record.

Heard both sides.

The case of the plaintiffs/petitioners in a nutshell is that, they are engaged in the business of property development and undertake construction works with various authorities and parties. They entered into a Development Agreement with defendants Nos. 1 to 4 concerning the property located at 164, Banerjee Para, P.O. Shyamnagar, P.S. Jagatdal, Dist. North 24 Parganas, for the construction of a multi-storied building. The initial agreement was executed on 20th September, 2012, followed by a supplementary agreement on 30th May, 2014. A notarized Power of Attorney was executed by the defendants Nos. 1 to 4 in favor of the plaintiffs on 20th September, 2012. However, the defendants subsequently revoked the Power of Attorney unilaterally, despite the plaintiffs having incurred significant expenses and completed 40% of the construction work at their own cost.

The plaintiffs also claim to have provided consideration for the purchase of 2 cottahs, 7 chittacks, and 34.27 sq. ft. of land from the concerned property, while the remaining portion (3 cottahs, 14 chittacks, and 11 sq. ft.) was inherited by the defendants. The plaintiffs allege that the defendants unlawfully obstructed the construction process and have now engaged defendants Nos. 5 and 6 to complete the remaining construction. These defendants are attempting to transfer the newly constructed flats to third parties, thereby prejudicing the plaintiffs' rights.

In the course of this dispute, both parties had previously sought legal recourse from the learned Civil Court, with injunction orders being issued in favour of both. Given the circumstances, the plaintiffs seek an order of injunction

## [2]

restraining the defendants from alienating, transferring, obstructing, or creating third-party interests over the concerned property, and from harassing the plaintiffs. The plaintiffs also seek a monetary claim of Rs. 1,39,60,000/- (Rupees One Crore Thirty-Nine Lakh Sixty Thousand) along with interest.

In support of the claims, the plaintiffs cite the Development Agreement dated 20th September 2012, the Registered Power of Attorney dated 27th September 2012, and the sanction plan issued by Bhatpara Municipality on 11th December 2014. The plaintiffs claim to have invested Rs. 40,00,000/- and completed 40% of the work. However, on 13th April 2017, the defendants unlawfully revoked the Power of Attorney with the intention of appointing a new developer without proper cancellation of the original agreement. This action was carried out forcibly and illegally.

In response, the plaintiffs filed a suit for permanent injunction, being Title Suit No. 199 of 2019, before the Learned Civil Judge, Junior Division, Barrackpore, where they obtained an ad-interim order of injunction restraining interference with their construction work. While this suit was pending, the defendants filed another suit (Title Suit No. 286 of 2019) and obtained an ad-interim order of injunction from the same court, prohibiting obstruction to the construction work. Notably, in Title Suit No. 286 of 2019, one Sudip Mitra, proprietor of "Maa Construction," was made a party as a plaintiff, and the defendant allegedly handed over the project to "Maa Construction" without revoking the Development Agreement with the plaintiffs.

This leads the plaintiffs to argue that the defendants have unlawfully transferred the project to a third party without fulfilling their contractual obligations and without cancelling the original agreement. The plaintiffs further allege that, during the pendency of both suits, "Maa Construction" completed the project and is attempting to sell the property to third parties.

The plaintiffs assert that the unilateral rescission of the contract is unlawful, as the developer has already entered possession of the property, invested significant funds, and completed a substantial portion of the construction. The revocation of the Power of Attorney and the handover of the incomplete project to "Maa Construction" without due legal procedure is not

tenable.

The plaintiffs/petitioners further submit that under Section 202 of the Indian Contract Act, a Power of Attorney is irrevocable when the agent has an interest in the subject matter of the agency. The plaintiffs argue that the Power of Attorney, executed in 2012, cannot be revoked without proper legal authority or an order from the competent court, especially since the plaintiffs have a vested interest in the property.

The plaintiffs argue that the balance of convenience is in their favor, as the unlawful actions of the defendants will cause irreparable harm if not restrained. The plaintiffs emphasize that without a proper injunction, there will be a multiplicity of proceedings and further harm to their rights and interests. Citing **AIR 1978 Patna 112**, the plaintiffs assert that, if successful in the suit, they will not have an adequate remedy at law, and thus, immediate protection is necessary to prevent the injury to their interests.

The plaintiffs pray for an order of injunction restraining the defendants from transferring, alienating, or creating third-party interests in the property or flats from the construction project. They further seek a declaration that the revocation of the Power of Attorney and the handover of the incomplete project to "Maa Construction" is illegal and void. Lastly, they seek a monetary claim of Rs. 1,39,60,000/- (Rupees One Crore Thirty-Nine Lakh Sixty Thousand) along with interest.

The learned Advocate for the plaintiff/petitioner has relied upon **MANU/BH/0022/1978, Smita Agarwal and Ors. vs. Nirmal Kumar Das and Ors.** which holds inter-alia, that “ *Interlocutory injunction Grant of-Plaintiff to establish prima facie case for-plaintiffs himself parties to earlier proceedings in which question of appointment of guardian was decided--Guardian appointed with consent of plaintiff being one of parties--Subsequently plaintiff cannot ask Court to restrain Guardians from managing minor's property--On ground--Court which appointed guardian had no jurisdiction to appoint etc.--Injunction passed in instant case set aside.*”

The defendants/respondents have contested the instant application by filing written objection against the injunction application.

**[4]**

The defendants submit that the present application, filed by the plaintiffs under Order 39 Rules 1 and 2, read with Section 151 of the Civil Procedure Code (C.P.C.), is not maintainable in law or in fact.

The defendants submit that the instant application is vexatious, motivated, and frivolous, filed with no reasonable cause but solely to harass and cause prejudice to the defendants.

The instant suit and the instant application are both misleading, as the plaintiffs have not undertaken any substantial work on the suit property as per the terms of the Development Agreement. The application distorts the facts and is aimed at achieving illegal gains under the guise of baseless claims. The application is also barred under the provisions of the Specific Relief Act, and is based on misleading averments designed to cause hardship to the defendants.

The averments in the instant application are founded on surmise and conjecture and rely on an illusory cause of action. The plaintiffs seek unnecessary, arbitrary, and unattainable reliefs, which, in the defendants' view, have no merit and are intended solely to annoy and cause prejudice to the defendants by restricting their rights, title, interest, and possession in the scheduled property and as such, the defendants have denied all the allegations made in the injunction petition.

The defendants further submit that, in seeking such vague and inappropriate reliefs, the plaintiffs have intentionally distorted the facts and misrepresented the circumstances surrounding the agreement dated 20th September 2012 which forms the basis of the entire suit and the plaintiffs' claims. The plaintiffs have failed to perform their contractual obligations under the said Agreement, including initiating substantial development work on the scheduled property, which led to the cancellation of the Power of Attorney. The plaintiffs have attempted to claim recovery for alleged investments, but such claims are based on arbitrary calculations and intended solely to harass the defendants.

The defendants state that they, by inheritance and purchase, are the joint owners of the scheduled property, which is described in detail in the suit. The purchase was made by the defendants out of their own funds, and the plaintiffs' claim of providing funds for the purchase is false and unsupported by any

evidence.

The defendants admit that, for the purpose of development, they entered into the said Agreement with the plaintiffs, who were granted a Power of Attorney to proceed with the development. A supplementary agreement was also executed, but despite obtaining the necessary sanction plan, the plaintiffs failed to initiate any development work, as per their contractual obligation.

The plaintiffs' claim of having completed 40% of the construction is misleading and contradicted by their own admissions in previous legal proceedings. Even if such work had been done, the delay and inaction by the plaintiffs in fulfilling their contractual obligations rendered the development impractical.

The defendants further submit that the plaintiffs' failure to honor the contractual terms, including the payment of rent for temporary accommodation, led to the revocation of the Power of Attorney in 2017. This was followed by a new development agreement with defendants Nos. 5 and 6 to complete the work.

The plaintiffs' suit, based on fabricated claims, is designed to cause prejudice and jeopardize the defendants. The relief sought, including an injunction, is unwarranted, as any claim can be compensated in monetary terms. The plaintiffs' delay in seeking relief and their failure to pursue their case promptly indicate a lack of legitimate grounds.

The defendants assert that the plaintiffs' allegations are fictitious and intended to obtain an injunction to disrupt the defendants' legitimate development activities. The plaintiffs' claims of investment are unsupported by any evidence, and the allegations made in the application are misleading and frivolous.

The defendants also note that the agreements between the parties are related to development work and not a commercial transaction, as incorrectly claimed by the plaintiffs. Therefore, the present suit is not maintainable under the Commercial Courts Act.

Hence, the defendants submit that the plaintiffs' claim is untenable, and the instant application should be dismissed, as it is an attempt to gain illegal advantage through baseless and malicious litigation. The relief sought is beyond

[6]

the scope of the court, and the plaintiffs, having come with unclean hands, are not entitled to any equitable relief and as such, the instant application is liable to be rejected.

The learned Advocate for the defendants/respondents has relied upon **1991(1) GCD 416, Bhupendra Steel vs. Krishna Export & Anr.** which holds inter-alia, that *for interim relief under Order 39, Rules 1 & 2 of the Civil Procedure Code, 1908, prima facie case, balance of convenience, irreparable injury and conduct of the party are to be seen for grant of temporary injunction. Grant of temporary injunction is a discretionary power in equity jurisdiction of the Court.*

The learned Advocate for the defendants/respondents has next relied upon **2012 AIR (SC) 437, Makers Development Services Pvt. Ltd. vs. M. Visvesvaraya Industrial Research and Development Centre** which holds inter-alia, that *the Court has to consider three basic principles while passing interim order of injunction: (a) prima facie case (b) balance of convenience and inconvenience (c) Irreparable loss and injury In addition, Court must also take into consideration the conduct of the parties. Court should not interfere only because property is a very valuable one. Grant or refusal of injunction has serious consequences depending upon nature thereof. Court must make endeavours to protect the interest of the parties.*

The learned Advocate for the defendants/respondents has further relied upon **2020(3) ICC 360, Pooja Mittal & Ors. vs. Rakesh Kumar & Ors.** which holds inter-alia, that *“Status Quo’ orders not to be passed when prima facie case is not made out.*

The learned Advocate for the defendants/respondents has relied upon **2021(3) GauLR 71, Dipak Chandra Ruhi Das vs. Pradip Kumar Sarkar and 14 Ors.** which holds inter-alia, that *“In absence of a prayer for permanent injunction, temporary injunction cannot be granted.”*

The learned Advocate for the defendants/respondents has additionally relied upon **2023(1) ICC 632, Sonic Thermal Pvt. Ltd. vs. Sri Ashok Kumar Dutta** which holds inter-alia, that *“Commercial Courts Act, 2015, Section 15(2)*

*Cont’d ... P/7*

*Limitation Act, 1963, Article 113 Money suit for recovery Rejection of plaint Allegations and counter allegations made by parties -Considering the fact that plant discloses cause of action which shows plaintiff's right to sue and that question of limitation comprises mixed question of law and fact in view of allegations and counter allegations as made through affidavit by parties Court finds nothing to interfere with order rejecting application - Suit is hopelessly barred under the law of limitation as the suit has not been filed within three years from the cause of action No ground to interfere.”*

The learned Advocate for the defendants/respondents has also relied upon **2006(2) Goa L.R. 301, John Vergese vs. Gracy Vergese** which holds inter-alia, that “Needless to mention that an interim relief is granted to a person on the footing that that person is prima facie entitled to the right on which the main relief is based as well as the interim relief. That relief is granted as an interim measure till the disposal of the suit in which is to be investigated validity of the claim of right that has been put forward. If no such claim has been put forward in the suit or proceedings or petition, it means that there can be no occasion for investigation of such a claim in the proceedings, or petition or suit, there can be no justification for the grant of an interim relief which will not only just lapse on the termination of the proceedings, but which will leave the parties in the same position in which they were before the institution of the suit, in the course of which the interim relief was sought and obtained. That is not the scope of grant of interim relief.”

The learned Advocate for the defendants/respondents has finally relied upon **2009(3) Cal. H.C.N. 605, Sri Dipendra Lal Shaw vs. Sri Gaurav Virendra Sanghvi & Ors.** which holds inter-alia, that “Civil Procedure Code, 1908, Order 39 Rule 1 and 2 - Suit for recovery of money - There was no scope of grant of any injunction in respect of property of defendant which could not be said to be the subject matter of the suit.

*Civil Procedure Code, 1908, Order 39 Rule 1 and 2 - Suit for declaration, injunction and for recovery of damages - It is not the law that merely because somebody has filed a money suit against a defendant, without proving anything more he will get an order of injunction against defendant by restraining from*

*transferring his property till the disposal of the suit so that the plaintiff does not face any difficulty in realising the decretal amount in the event of success in the suit - Impugned order set aside - Appeal allowed.”*

Considering the facts and circumstances of the case, plaint, the injunction petition, the written objection, the written notes of argument, the case-laws relied upon by both parties and the materials on record as well as the submissions of the learned Advocate for the two contesting sides it appears that the plaintiffs/petitioners have prayed for temporary injunction in the instant Money Suit claiming that they have invested substantial sum of money for the development of the concerned property and the General Power of Attorney executed in their favour by the defendants/respondents have been unilaterally canceled illegally.

It has also been alleged that the defendants/respondents have completed the construction engaging third party developer to the prejudice and predicament of the plaintiffs/petitioners and till date more than one crore of rupees is owed to the plaintiffs/petitioners. At such a juncture if the defendants/respondents transfer or alienate the flats of the said project which are yet to be sold then, the plaintiffs/petitioners would not have any adequate relief even if they succeed in proving their case in the instant suit. In this context it appears that ultimately, it is a Money Suit and the project has been completed. Whether the plaintiffs/petitioners have invested money for the said construction work or what quantum of money was spent by the plaintiffs/petitioners for the construction work are subject to proof on trial. One thing is evident that the initial Agreement between the parties was entered in the year 2012 and their had been a subsequent supplementary Agreement between the parties in the year 2014. Entry of the third party developer and revocation of the General Power of Attorney of the plaintiffs/petitioners by the defendants/respondents had occurred long time thereafter. There is no doubt that the plaintiffs/petitioners have failed to hand over the first floor of the proposed construction to the defendants/respondents/owners within the stipulated time.

It is also an apparent fact that the construction of the property has been completed by another developer and the plaintiffs/petitioners does not have any claim over the property in question. The plaintiffs/petitioners never filed any suit for specific performance. Of course they have filed a suit for permanent

injunction simplicitor being Title Suit No.199 of 2019 before the learned Civil Judge, Junior Division, Barrackpore. Initially an ex-parte ad-interim injunction order had been passed against the present defendants/respondents. However, the said ad-interim injunction order subsequently vacated vide Order dated 09.02.2023 passed in the said Title Suit.

Again, the defendants/respondents had also filed another suit against the plaintiffs/petitioners before learned Civil Judge, Junior Division, 1<sup>st</sup> Court Barrackpore vide Title Suit No.286 of 2019 and in the said suit also their had been an ex-parte ad-interim injunction order passed on 10.12.2019 against the present plaintiffs/petitioners. The construction of the property in question was completed while the said injunction order was in force.

At this stage imposition of restraining order by way of injunction upon the defendants/respondents appears unnecessary. The alleged monetary claim of the plaintiffs/petitioners is not a secured debt. There is no justification for putting an embargo upon the defendants/respondents from transferring or alienating the unsold flats of the said construction. Money is an adequate relief in the Money Suit and no prima-facie case has been made out to subject the concerned property of the defendants/respondents for temporary injunction. Prima-facie, the petitioners have failed to prove that the property where the construction work has been done was partially purchased at the fund provided by the plaintiffs/petitioners. They have failed to prove that they have an interest over the said property.

As such, the plaintiffs/petitioners have failed to fulfill the primary parameters of granting temporary injunction order i.e. in other words it has failed to establish the prima facie case.

The plaintiffs claim that they have incurred significant expenses in the construction and have completed 40% of the work. However, the defendants have denied this claim, asserting that the plaintiffs failed to perform any substantial work as per the terms of the Development Agreement. The cancellation of the Power of Attorney, according to the defendants, was due to the plaintiffs' non-performance.

At this stage, the Court finds that the plaintiffs have failed to substantiate their claim of completing 40% of the construction work. This claim, if at all, may be proved only through evidence on trial. The defendants' version of events, including the revocation of the Power of Attorney due to the plaintiffs' failure to

perform contractual obligations, casts doubt on the plaintiffs' claim. Consequently, the plaintiffs have not made out a strong prima facie case for the grant of an order of temporary injunction.

The plaintiffs seek Rs. 1,39,60,000/- as compensation for the expenses incurred in the construction. However, the defendants argue that the plaintiffs' claim is based on arbitrary calculations and that the plaintiffs have not provided adequate evidence to substantiate this amount. In the absence of clear documentation or proof of the alleged investment, the plaintiffs' claim for monetary relief appears to lack solid grounding at this stage.

The defendants have provided a detailed defense, claiming that the plaintiffs' failure to perform under the agreement led to the revocation of the Power of Attorney and the subsequent development agreement with defendants Nos. 5 and 6. The defendants' contentions regarding the plaintiffs' non-performance are supported by the cancellation of the Power of Attorney in 2017. Given the lack of evidence supporting the plaintiffs' claims of substantial investment and construction progress, the defendants' objections appear reasonable.

In view of the issues raised and the arguments presented, the Court finds that the plaintiffs have failed to establish a prima-facie case for the grant of an order of temporary injunction. The plaintiffs have not provided sufficient evidence to substantiate their claims, including the claim of having completed 40% of the construction or the monetary claim of Rs. 1,39,60,000/-.

The plaintiffs/petitioners have failed to establish a prima-facie case for the grant of an order of injunction. The balance of convenience and inconvenience tilts against the plaintiffs/petitioners for passing an order of temporary injunction as prayed for.

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

In view of the above, the prayer for temporary injunction order is considered and **refused** and the present application under Order 39 Rule 1 & 2 read with Section 151 of the CPC for temporary injunction is **rejected on contest** and disposed of.

[11]

Fix 15.05.2025 appearance and steps.

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