

Ej. Suit No. 346 of 2006
CIS No. WBPS01-001824-2006

Order No. 127
26.11.2025

Today is fixed for passing order in connection with the petition dated 02.07.2025 filed by the plaintiff praying for injunction against the defendant.

Both sides filed haziras through their Ld. Advocates.

Ld. Advocate for the plaintiff has filed the CIS generated copy of the order dated 21.11.2025 passed in C.O. No. 3968 of 2025.

It appears that the Hon'ble High Court has been pleased to direct this Court *to make sincere endeavour to dispose of the suit within two months from the next date fixed. Adequate opportunity shall be granted to the parties to contest the same.*

Record is taken up for passing order in connection with the petition dated 02.07.2025 filed by the plaintiff.

The contention of the plaintiff is that he filed the instant suit against M/s. Ram Narayan Roy duly being represented by the partners namely Gobinda Chandra Roy and Rabindra Roy, both now deceased and Ramen Roy who was the monthly tenant in respect of the suit premises under the plaintiff and during the pendency of the suit, all the above partners expired. The application u/s 7(2) of the WBPT Act, 1997 is still pending and since the partners have expired during the pendency of the suit and in view of the verdict of the Hon'ble Supreme Court report in (2021) 9 SCALE 314, the non-residential tenanted premises would be deemed to be vacant in law and the tenancy would be deemed to have ceased, and, as such, the plaintiff has made application before this Court which is pending for consideration and disposal. The defendant no. 1 has contested the suit and proceeding with the said application. It is submitted that at the time of cross-examination of the witness of the defendant firm, it was disclosed that all the partners of the said firm has expired and that other persons are allegedly carrying on such business of the defendant no. 1 on the basis of the alleged new partnership deed dated 27.02.2020.

It is alleged that the alleged present partners of the defendant no. 1 firm have started to renovate around the suit room by making partition wall and it also came to knowledge that the defendant is negotiating to part with a portion of the suit room. On 24.06.2025 while visiting the suit premises upon getting information from his employees about the construction of the suit premises, he saw that the mezzanine floor was constructed in the suit room without the consent of the plaintiff. It is submitted that he also lodged the complaint at the Jorabagan Police Station and also made complaint before the Kolkata Municipal Corporation about the unauthorised construction. Thus the plaintiff prays for an order of temporary injunction restraining the defendant firm and its men and agents from carrying out any nature of addition and alteration or renovation within the suit room and from parting with the possession of the suit room or portion thereof for the purpose of carrying on commercial activities by persons with whom the

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plaintiff does not have any privity of contract or relationship of landlord and tenant.

On the other hand, the defendant no. 1 submitted that the deed of partnership has already been filed before this Court as per the order of the Court. The partners of the defendant no. 1 jointly have been carrying on the same trade which was being carried on by their predecessor. It is further submitted that no work of repair or renovation was ever done as alleged and also denies the construction of partition wall and separation of three separate rooms.

It is further submitted that the mezzanine floor has been in existence since at least 50 years back, since the lifetime of Chiranjoy Dey, the father of the plaintiff. It is submitted that holes had appeared on the floor through which rain water was percolating inside the room, damaging the food products. Hence, in order to stop the rain water from damaging the food products, they had cemented the ground with red cement and save and except this red cement, no extra work was ever done in the said room. The police had even visited the suit premises on 04.06.2025 but found no construction work, and, as such, they left the spot and they have not sublet the suit room to any body and the defendant no. 1 submits that the plaintiff with the intention to harass them has filed the instant application, thus prays for rejection of the same.

The plaintiff has filed the copy of the application dated 24.06.2025 made before the Jorabagan Police Station and also filed some photographs purportedly of the suit premises.

Having heard, perused and considered the submission of both sides and the material on record, I do not prima facie find any materials to substantiate the allegations of the plaintiff that the defendant has illegally constructed mezzanine floor in the suit premises. Mere putting of red cement to repair the water seepage in order to protect his food products from getting spoiled are minor changes in the form of repair and can not be termed as substantial changes or structural changes to cause irreparable injury and damage to the plaintiff.

In view of the above, the petition dated 02.07.2025 filed by the plaintiff is rejected as devoid of merit.

To **09.12.2025** for argument in terms of the petition under order 7(2) of the WBPT Act.

Dictated and corrected by me:

Judge

Glady Bomjan
(J.O. Code: 01039)
Judge, 3rd Bench
Presidency Small Cause Court,
Calcutta