

T.S. 503 of 2022
CNR No. WBSP09-000818-2022

Dated: 24.11.2022

The plaintiff has filed an application under Order 39 Rules 1 and 2 of CPC read with Section 151 of CPC for an order of ad-interim injunction.

As per report of the Sheristadar, no caveat is pending. The said application is taken up for hearing. Heard the Ld. Advocate for the plaintiff.

Perused the plaint, injunction application supported by an affidavit and other documents. Considered.

This is a suit for declaration and permanent injunction.

It appears from the plaint as well as the injunction application, supported by an affidavit, that the plaintiff is running a factory at the suit property as described in the Schedule of the plaint and has been carrying on business for more than last 50 years without any obstruction from the defendant herein. One of the partners of the plaintiff firm i.e., Mr. Sukumal Dey had Power of Attorney to run the Wakf Estate as granted by the defendant. On 18.06.2022, the defendant forcefully entered into the suit property and started disturbing the functioning of business at the suit property. The partner of the plaintiff-firm lodged complaint before Lalbazar P.S. Again on 03.07.2022, the plaintiff's workers were abused by the defendant and the defendant also threatened the partners of the plaintiff-firm of dire consequences. The partner of the plaintiff-firm lodged GDE No. 213, dated 03.07.2022 before local P.S.. Lastly, on 22.11.2022 the defendant, along with his men and agents, tried to dispossess the partners of the plaintiff firm and also abused them, which compelled the partners to lodge complaint before Chitpore P.S. On finding no other alternative, the plaintiff has filed the instant suit and has sought for a restraining order against the defendant.

In support of its contentions, the plaintiff has filed original and photocopies of Aadhar Card, Voter I.D. Cards, Original Trade License, Last Rent Receipt, Original Partnership Deed, I.T. Return and Received copy of Complaint letter dated 22.11.2022 addressed to O.C. Chitpore P.S, Received copy of letter dated 22.06.2022 addressed to Commissioner of Police Kolkata and Copy of GDE No. 213 dated 03.07.2022.

On perusal of the plaint, it appears that the plaintiff has sought for a declaration to the effect that "*the plaintiff is a legal bona fide tenant under the defendant in respect of the suit premises*". It will be pertinent to highlight that it is the plaintiff's contention that Mr. Sukumal Dey has Power of Attorney for running the said Wakf Estate on behalf of the Mutawali i.e., the defendant, but no such Power of Attorney has come on record. It appears that the plaintiff has relied upon a rent receipt dated 01.09.2022 in support of its contention that it is a tenant in respect of the property as described in the Schedule of the plaint. However, the rent receipt appears to have been issued in respect of one Go-down and not in respect of the property described in the Schedule of the plaint which includes one factory and one residential flat. It is also pertinent to highlight that the plaint does not reveal anywhere that the plaintiff is also in occupation of a residential portion. Mere filing of trade license and electricity bill cannot *prima facie* establish the *factum* of possession of the plaintiff in respect of the suit property as described in the Schedule of the plaint.

In such a scenario, the plaintiff has failed to establish a *prima facie* case at this stage. As such, I am not inclined to allow the prayer of the plaintiff without giving the defendant an opportunity of being heard.

Hence, the present application for ad-interim injunction is considered and refused at this stage.

Issue notice upon the defendant to show cause, within 15 days from the date of receipt of the notice, as to why the plaintiff's prayer for temporary injunction shall not be allowed.

To date **(04.01.2023)** for S/R A/D.

Civil Judge (Jr. Division)
1st Court, Sealdah
(UID: WB01468)

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