

In the Court of District Judge, South 24-Parganas at Alipore

Misc. Appeal No. 88 of 2025 (R-88)

CNR No. WBSP01-003476-2025

Present : Sri Subhradip Mitra (WB01129) District Judge
South 24 Parganas at Alipore

Sri Manas Kumar Jana

..... Appellant

Vs.

Smt. Dipty Sen

..... Respondent

Order No. 03, dated 06.05.2025

The record is put up today by virtue of a put up petition filed on behalf of the appellant.

Ld. Advocate for the appellant moves the application under Order 39 Rules 1 and 2 read with Section 151 of C.P.C.

It appears from the record that no caveat has been filed.

The contention of the appellants, in a nutshell, is that the appellant is the absolute owner of the suit property and he is in possession over the same. Subsequently, a leave and license agreement was executed on 05.01.2024 between the parties at a monthly license fee of Rs.35,000/- and thereafter, the defendant issued two cheques dated 02.01.2022 and 07.01.2024 amounting to Rs.10,500/- and Rs.35,000/- respectively in favour of the plaintiff. The said two cheques were dishonoured due to insufficient fund and inspite of several attempts on behalf of the plaintiff to contact with the defendant in this regard but to no effect. Hence, the plaintiff vide letter dated 30.01.2024, revoked the leave and license agreement with immediate effect. Thereafter, the plaintiff started his business under the name and style "M/S Manas Exim" at the suit property. However, on or about 30.01.2024, the plaintiff suddenly noticed that an amount of Rs.2,10,000/- was transferred to the account of the plaintiff from a third party and as the plaintiff has no nexus with the said third party, the said

transfer is illegal and does not create any interest in favour of the said third party and the petitioner. Accordingly, having no alternative, the plaintiff sent an Advocate's letter on 30.01.2024. The petitioner also noticed that the defendant is moving around the suit property with some unknown faces with an alleged intention to create third party interest illegally over the suit property behind the back of the plaintiff. The plaintiff has lodged a complaint before the local police station on 21.02.2025 in this regard but without any result. Finding no other alternative, the appellant, as plaintiff, filed Title Suit No.313 of 2025, before the Ld. Court below for declaration and permanent injunction along with an application under Order 39 Rules 1 and 2 read with Section 151 of C.P.C. with a prayer for an order of ad-interim injunction which the Ld. Court below refused. As such, the appellant have filed the instant Misc. Appeal along with an application under order 39 Rules 1 and 2 read with Section 151 of C.P.C. praying for an order of ad-interim injunction.

Heard the submission of the Ld. Advocate for the appellant.

Perused the materials annexed with the case record.

Considering the materials available on record and pleadings supported by an affidavit and from the documents, it appears that the impugned suit has been filed for a decree of declaration as well as for permanent injunction restraining the defendant/respondent and from disturbing the peaceful possession of the appellant in the suit property, on the apprehension of alleged encroachment by the respondent. Hence, the suit property is required to be protected during the pendency of the instant appeal, or it may hamper the very purpose of filing the instant appeal.

Therefore, it appears that the appellant has been able to make out a *prima facie* case in his favour and the balance of convenience and inconvenience is also in favour of the appellant. If, at this stage, an ad-interim order is not granted in favour of the appellant, then the appellant will suffer irreparable loss and injury. As such, this Court is of the opinion that an ad-interim injunction may be granted for a

restricted period in favour of the appellant till hearing the respondent.

Hence, it is,

ORDERED

that the prayer for an order of ad-interim injunction is allowed in favour of the appellants for a **restricted period till 05.06.2025.**

Both parties to the instant appeal are directed to maintain **status quo** in respect to the nature, character and possession of the suit property as on this day till **05.06.2025.**

The appellant is directed to comply with the provisions as enumerated under Order 39 Rule 3(a) and 3(b) of C.P.C.

Issue notice upon the respondent asking her to show cause within 15 (fifteen) days from receipt thereof as to why the prayer for temporary injunction of the appellant shall not be allowed.

To date for S/R and A/D.

Dictated & corrected by me,

Sd/- S. Mitra

District Judge

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District Judge
(WB01129)