

IN THE COURT OF DISTRICT JUDGE,
SOUTH 24-PARGANAS AT ALIPORE

Misc. Appeal No. 151 of 2025 (R-151)

Present : Sri Chinmay Chattopadhyay-II (WB00695) District Judge-in-charge,

Ashfaque Naiyer Warsi & Anr.

... Appellants

Vs.

Gita Devi & Ors.

... Respondents

Order No. 02, dated 12.06.2025

The record is taken up at the instance of a put up petition filed on behalf of the appellants.

Appeal is admitted.

Ld. Advocate for the appellants prays for moving the application filed under Order 39 Rules 1 and 2 read with Section 151 of C.P.C.

As per office report, no caveat has been filed.

As such, the application filed under Order 39 Rules 1 and 2 read with Section 151 of C.P.C. is taken up for hearing.

The case of the appellants, in a nutshell, is that the appellants/plaintiffs are bonafide and lawful tenants in respect of the suit property as described in the injunction application. The proforma respondent, being a Developer, was developing the suit premises and the appellants approached the proforma respondent with an intention to book a flat and in that respect, the appellants and the proforma respondent entered

into a Booking Agreement on 10.12.2021, wherein the respondents were confirming parties. At the time of signing the Agreement dated 10.12.2021, it was agreed that the appellants will become tenants under the respondents at a construction rate of Rs. 30,00,000/-, which will be payable to the respondent nos. 1 to 5 and the appellants have paid a sum of Rs. 15,00,000/- towards booking advance. Thereafter, the appellants further paid sum to the respondents herein. Thereafter, the appellants became tenants in respect of the suit property by virtue of Tenancy Agreement dated 01.01.2022 and since induction as a tenant, the appellants are enjoying their tenanted portion by paying monthly rents. It has been alleged by the appellants that for the last few months, the respondent nos. 1 to 4 are creating disturbance in the peaceful enjoyment of the appellants in respect of the suit property with a solitary objection to oust/evict the appellants and their family members. Thereafter, the appellants went to the local P.S. and filed a Written Complaint on 06.03.2025 and also initiated a proceeding under Section 163(2) of B.N.S.S. being M.P. Case No. 604 of 2025 before the Ld. 1st Executive Magistrate at Alipore. On 14.04.2025, the respondent nos. 1 to 4 tried to grab the suit property from the possession of the appellants.

Finding no other alternative, the appellant, as plaintiff, filed a suit, being Title Suit No. 645 of 2025, for declaration and permanent injunction before the Ld. Trial Court along 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. Trial Court refused. As such, the appellants 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 appellants.

Perused the materials annexed with the record.

Upon perusal of the Agreement for Booking dated 10th December, 2021, it appears that an agreement was entered into between the proforma respondent, the appellants and the respondent nos. 1 to 4. Subsequently, money to the tune of Rs. 15 lacs was also paid to the Developer, being the proforma respondent herein. Thereafter, a Tenancy Agreement was also entered in between the parties. The appellants have alleged in the application for temporary injunction, which has been supported by an affidavit, that the respondent nos. 1 to 4 are trying to evict the appellants in respect of the suit premises without due process of law

Considering the materials available on record and the averments made in the application for temporary injunction, which has been supported by an affidavit, it appears that the appellants have been able to make out a *prima facie* case in their favour and the balance of convenience and inconvenience is also in favour of the appellants. If, at this stage, an order of ad-interim injunction is not granted in favour of the appellants, then the appellants 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 appellants till hearing the respondents.

Hence,

it is,

ORDERED

that the prayer for an order of ad-interim injunction is allowed in favour of the appellants till **11.07.2025**.

The respondents and their men and agents are restrained from evicting the appellants from the suit property and also restrained from creating any nuisance, annoyance and disturbance in the peaceful enjoyment of the suit property by the appellants as mentioned in the schedule of the injunction application without due process of law till **11.07.2025**.

The appellants/plaintiffs are directed to comply with the provisions as enumerated under Order 39 Rule 3 (a) and 3 (b) of C.P.C.

Issue notices upon the respondents asking them to show cause within 15 (fifteen) days from receipt thereof as to why the instant Misc. Appeal shall not be allowed in favour of the appellants.

Requisites at once.

Fix **11.07.2025** for S/R and A/D.

Dictated & corrected by me,

Sd/- Sri Chinmay Chattopadhyay-II

District Judge I/c

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