

West Bengal Form No. 3702.

HIGH COURT FORM NO. (J) 3
HEADING OF JUDGEMENT OF APPEAL

DISTRICT : **South 24 Parganas**

IN THE Court of the Additional District Judge,
10th Court, Alipore, South 24 Parganas.

Present : **Sri Uttam Bhattacharya (WB00897)**
Additional District Judge,
10th Court, Alipore, South 24 Parganas.

.....**Tuesday**.....the**1st**day of**September, 2026**

Misc. Appeal No. 130 of 2026

CIS No.130 of 2026

CNR No.WBSP01-007073-2026

From the Decree/Order passed by the 1d Civil Judge (Jr. Divn.), 1st Court,
Alipore, South 24 Parganas and made in

T.S. 571 of 2026

Sri Avijit Ghoshal

..... Appellant/Plaintiff

-VERSUS-

Chingrighata Matsya Aratder Samiti

..... Respondent/Defendant

This appeal coming on this day or having been heard on 31.08.2026 in the
presence of

Sri Subhendu Ghosh

Advocate(s)
for Appellant(s)
Pleader(s)

Sri Surojit Sen Gupta

Advocate(s)
for Respondent(s)
Pleader(s)

And having stood for consideration to this day, the Court delivered the
following judgment.

This appeal is directed against the order dated May 21, 2026 (in short,
'the impugned order'), passed by the Court of 1d Civil Judge (Jr. Divn.), 1st
Court, Alipore, South 24 Parganas (in short, *'the 1d Court below'*), in T.S. 571
of 2026.

Facts -

The case of the plaintiff as emerged from the copy of the plaint so filed with the memorandum of appeal is that the plaintiff is the proprietor of *Arnab Fish Agency* dealing with raw fish selling business. The plaintiff in pursuant to the direction given by the defendant through its resolution executed by the members of the defendant association, deposited Rs.7 lacs to the defendant through cheque 104256 against the receipt vide no.605 dated August 13, 2021. The plaintiff was accordingly, allotted stall no.45 which is the suit property herein and has more fully been detailed in the schedule of the plaint. The plaintiff since August 13, 2021 has been possessing the suit property.

The plaintiff, thereafter, obtained trade license from KMC by paying the requisite license fees of Rs.550/- per annum lastly for the year 2026-27.

It is alleged that the men and agents of the defendant have now been constantly trying to stop the plaintiff from running his business from the suit property. The plaintiff lodged complaint with local Police Station but of no result. Hence, the suit for declaration and for permanent injunction.

From the certified copy of the order dated May 15, 2026 passed in TS 571 of 2026 it appears that the plaintiff filed a petition for temporary injunction under order 39 rule 1 & 2 of CPC read with section 151 of CPC. From the certified copy of the impugned order it appears that on May 21, 2026 the plaintiff moved for ad interim injunction. The 1d Court below opined in the impugned order that the plaintiff had no prima facie case and accordingly, refused to grant ad interim injunction.

Discontented with the impugned order, the plaintiff has come up with the instant appeal challenging the impugned order on the ground amongst others thereby stating *inter alia* that the 1d Court below has erred both in facts and law in the impugned order in refusing to grant ad interim injunction. On that score, it has prayed for an order of setting aside of the impugned order.

Point for determination

Whether the impugned order causes miscarriage of justice thereby calling for interference of this Court.

Decision with reasons

At the outset, I find that the record of the 1d Court below is not available before this Court. However, certified copy of the impugned order and the photostat copy of the plaint in TS 571 of 2026 and of the relevant documents viz resolutions of the defendant association, letters dated August 6, 2021,

August 13, 2021, receipt of Rs.7 lacs, Trade license, written complaint before the local Police Station dated May 13, 2026 are found to have been filed with the memorandum of appeal by the appellant. I accordingly, proceed with the appeal.

The 1d counsel for the appellant has contended that the appellant has tendered all the relevant documents to substantiate the possession of the appellant in the suit property and therefore, the 1d Court below has committed serious error in refusing to grant ad interim injunction.

Per contra, the 1d counsel for the respondent has contended that the 1d Court below has committed no error in the impugned order and thus, Court should not interfere with the impugned order.

I have given my careful attention to the rival contentions of the 1d counsel for the respective parties at considerable length. I have gone through the certified copy of the impugned order and the other materials on record available before this Court.

Agreeingly, the respondent is a body of association in the name and style *Chingrighata Matsya Aratder Samiti*. It prima facie appears from the photocopy of receipt dated August 13, 2021 that the appellant paid Rs.7 lacs to the respondent in pursuant to the letter dated August 6, 2021 copy of which is also filed in the appeal.

From the copy of letter dated August 13, 2021 it appears that the suit property was allotted in favor of the appellant by the respondent. From the copy of Trade license it prima facie transpires that the appellant has been running its business from the suit property. Thus, all these documents indicated above prima facie establishes that the appellant is in the possession of the suit property.

The copy of written complaint dated May 13, 2026 it appears that the appellant made the similar allegations against the respondent before Pragati Maidan Police Station. So, it prima facie appears that there was interference with the possession of the appellant in the suit property by the respondent. I am sincerely unable to feel what more is required to grant ad interim injunction.

Viewed thus, the appellant has a strong prima face case in his favor. It appears further that there is urgency and if the respondent is not restrained from interfering with the possession of the appellant in the suit property, the appellant would suffer irreparable loss and injury which cannot be

compensated by any means. So, the balance of convenience and inconvenience certainly tilts in favor of the appellant. With respect, the 1d Court below has erred in refusing to grant ad interim injunction in the impugned order.

In the conspicuous, I feel that an order of injunction restraining the respondent from interfering with the possession of the appellant in the suit property till disposal of the petition for temporary injunction would serve the purpose. Here, I clarify that while considering the petition for temporary injunction, the 1d Court below shall not be burdened with the observations made in this judgment.

The appeal thus, succeeds.

The memorandum of appeal is properly stumped.

Hence, it is

ORDERED

that the instant appeal being Misc. Appeal no.130 of 2026 be and the same is thus considered and stands **allowed** on contest against the respondent but without cost.

The impugned order dated May 21, 2026 passed by the Court of 1d Civil Judge (Jr. Divn.), 1st Court, Alipore, South 24 Parganas in T.S. 571 of 2026 is hereby **set aside**.

The prayer for ad interim injunction made by the plaintiff/the appellant herein, is considered and allowed thereby restraining the defendant/respondent herein, from interfering with the possession of the plaintiff in respect of the suit property till disposal of the petition for temporary injunction filed in the suit.

The 1d Court below is directed to give an opportunity to the defendant to file written objection if any, and thereafter, to dispose of the petition for temporary injunction dated May 15, 2026 filed in TS 571 of 2026 as expeditiously as possible but preferably within *four months* from the date of communication of this order.

Let a copy of this judgment be sent down to the 1d Court below for information and necessary action.

Dictated & corrected by me.

(U. Bhattacharya)
Additional District Judge,
10th Court, Alipore,
South 24 Parganas

(Uttam Bhattacharya)
Additional District Judge,
10th Court, Alipore,
South 24 Parganas