

In the Court of Ld. District Judge, South 24-Parganas

Misc. Appeal No. 263 of 2021 (R-263)

Present : Chaitali Chatterjee Das, (WB01056) District Judge  
South 24 Parganas at Alipore

Order no. 02, dated 17.12.2021

The record is put up today by virtue of one put up petition.

Appeal is filed within the prescribed period of limitation. Thus, the appeal is admitted

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

The appellant intends to move one order of stay of the operation of the impugned order of injunction dated 15.11.2021 passed by the Ld. Civil Judge (Jr. Divn.), 6<sup>th</sup> Court at Alipore in Title Suit No. 1441 of 2021.

It is stated that by practicing fraud upon the Ld. Court below, an order of injunction has been obtained for which he has been highly prejudiced and in order to impeach the same, the instant appeal has been filed.

It is, further, submitted that such order was passed by the Ld. Court below considering the submissions made on behalf of the present respondent that the present appellant in violation of the alleged agreement tried to install meter on the ground floor of the suit property and tried to dispossess the plaintiff therefrom forcibly, when the fact remains that the appellant has already constructed the said G+3 storied building and 90% of such work has been completed. The present respondent is creating obstruction to the development works of the appellant. As a result, further development work had to be stopped. Accordingly, the appellant prays for staying of the impugned order.

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

Perused the record and the agreement entered into between the parties and copy of the plaint, annexed herewith.

At the outset, it can be said that by virtue of a judgment of Hon'ble High Court at Calcutta reported in AIR 2006 Cal 195, passed by Hon'ble

Justice Subhro Kamal Mukerjee, that no grant of order of stay of operation of the order granting temporary injunction should be considered, as it would amount to allowing the appeal itself. Further, it transpires that the Ld. Advocate has tried to make his submission on the point of practicing fraud upon the Ld. Court and vide such order of injunction, the possession of the present defendant is going to be effected

Therefore, at this stage, this Court is of the view that no such urgency can be found to pass an order of stay, without giving an opportunity of hearing to the respondent. Hence, unable to allow the same.

Issue notice.

Requisites at once.

Fix **17.01.2022** for S/R and A/D.

Dictated & corrected by me,

Sd/- Chaitali Chatterjee Das

District Judge

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