

GAHC010219092025



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : I.A.(Civil)/3219/2025

INDU DEVI SARMA AND ANR
W/O LATE CHANDDRA NATH SARMA

2: JITENDRA NATH SARM
SON OF LATE CHANDRA NATH SARMA
BOTH ARE RESIDENTS OF APARTMENT NO. 401
RIANSHI WOOD APARTMENT
LAKHIMI PATH
HATIGAON
DISPUR
GUWAHATI
PIN- 781038
DISTRICT- KAMRUP M
ASSAM AND HEREIN REPRESENTED BY THE ATTORNEY HOLDER NAMELY
SUBIMAL CHAKRABOR

VERSUS

GAJENDRA NATH SARMA AND ANR
SON OF LATE BHAVA NATH SARMA

2:MANASH PRATIM SARMA
SON OF SRI GAJENDRA NATH SARMA
BOTH ARE RESIDENTS OF NEAR PADUM BHAWAN
DURGA SAROVAR
KAMAKHYA GATE
GUWAHATI
PIN- 781010
DISTRICT- KAMRUP M
ASSAM

Advocate for : MR. S CHAMARIA
Advocate for : appearing for GAJENDRA NATH SARMA AND ANR

**BEFORE
HONOURABLE MR. JUSTICE MRIDUL KUMAR KALITA**

ORDER

Date : 19.01.2026

- 1.** Heard Mr. S. Chamaria, learned counsel for the applicants. Also heard Mr. K. R. Borooah, learned counsel for the respondents.
- 2.** This application has been filed by the applicants in connection with FAO No. 63/2025 under Order 41 Rule 5 of the Code of Civil Procedure, 1908 for stay of the operation of the order dated 12.08.2025 passed by the Court of learned Additional District Judge No. 1, Kamrup(M) in Misc.(J) Case No. 52/2025 filed in Misc.(J) Case No. 26/2025 arising out of Special LG Case No. 7/2025.
- 3.** The learned counsel for the petitioners has submitted that by the aforesaid order, the Trial Court had rejected the prayer for grant of temporary injunction in favour of the petitioners and has also imposed a cost of Rs.5,000/- on the ground that misleading facts and misrepresentation was made by the petitioners in his application under Order 39 Rules 1 and 2 filed before the Trial Court.
- 4.** The learned counsel for the petitioners has submitted that the petitioners has impugned the aforesaid order by filing the connected FAO No. 63/2025 in which notice has been issued to the respondents and scanned copies were also called for. He submits that the impugned order has been challenged by the applicants in the connected FAO mainly on the ground of perversity as well as on the ground that while dismissing the prayer for grant of temporary injunction, the three golden principles were not discussed by the Trial Court. He further submits that the observation that the applicants has misled and misrepresented the Trial Court are also not true and same has been challenged

in the connected FAO.

5. He further submits that initially by order dated 19.03.2025, the Trial Court had granted ad-interim *ex-parte* injunction against the preset respondents, however, by the impugned order, same was vacated.

6. On the other hand, the learned counsel for the respondents has submitted that the Trial Court has considered all the aspects of the case and correctly decided the application under Order 39 Rules 1 and 2 as well as the application filed by the present respondents under Order 39 Rule 4 of the CPC by vacating the *ex-parte* ad-interim temporary injunction order.

7. This instant application has been filed under Order 41 Rule 5 of the CPC which is applicable for stay of execution of the decree or order of the Court which is challenged in a Court. Since, the order of dismissal of the temporary injunction passed by the Trial Court is not amenable to any execution, hence, in respect of the dismissal order, this application under Order 41 Rule 5 is not maintainable. However, as regards the imposition of cost of Rs.5,000/- on the applicants, same needs to be examined in the connected FAO No. 63/2025.

8. Hence, during the pendency of the connected FAO No. 63/2025, the direction to the petitioners for depositing the cost of Rs.5,000/- to the DLSA, Kamrup(M) shall remain stayed during the pendency of the connected FAO.

9. With the above observation, this interlocutory application is disposed of.

JUDGE

Comparing Assistant