



2025:CHC-AS:719

20.08.2025
Ct. no.655
Sl. No.156
(Nandita)

**SA 351 of 1995
With
IA No. CAN 13 of 2025
(Assigned)**

**Sumon Sengupta & Ors.
Vs.
Smt. Pusparani Banerjee & Ors.**

Mr. Chittapriya Ghosh,
Mr. Sourav Kumar Mukherjee,
Mr. Pawan Kumar Gupta,
Ms. Sahana Pal,
Mr. Souharya Mitra

... for the Appellants Nos. 5(a) and 5(b)
(in SA 351 of 1995)

Mr. Partha Pratim Roy,
Mr. Pinaki Bhattacharya,
Mr. Ashok Das,
Mr. Priti Dutta

.....for the Respondent Nos. 2 & 4

In Re: CAN 13 of 2025

1. This is an application seeking for an order of injunction in terms of prayer (a) of the petition.
2. It is submitted by the learned Advocate for the appellants that an apparent fraud had been committed by one of the appellants, which vitiated the very substratum of the proceedings. It is contended that one Mr. Avik Kumar Sengupta, who was appointed as the Constituent Attorney on behalf of the remaining appellants, acted in a manner that was not only contrary to the interests of the appellants but was also tainted with mala fide intention. The allegation is that Mr. Sengupta, with a calculated design, filed an application before the Court under the provision of Order I Rule 10 of the



Code of Civil Procedure, 1908, praying for transposition of rest of the appellants into the category of respondents.

3. The Court, upon consideration of such application, allowed the same and by virtue of the said order, rest of the appellants stood transposed as respondents. It is the grievance of these appellants that the said act of transposition was neither authorized by them nor did it reflect their real intention, rather it was engineered by Mr. Sengupta to serve an ulterior motive. It is further submitted that immediately after the transposition was effected, another application was filed by Mr. Sengupta, again purporting to act on behalf of the appellants, with a prayer for withdrawal of the appeal. Acting upon such application, the Court permitted withdrawal of the appeal.
4. The learned Advocate for the appellants has further contended that the entire sequence of events demonstrates a concerted effort to subvert the interest of the appellants. It is contended that the application for withdrawal was filed with ill motive and in collusion with the respondents/landlords, who were the ultimate beneficiaries of such withdrawal. It is the specific case of the appellants that immediately after the withdrawal of the appeal, the respondents/landlords took advantage of the situation and proceeded to demolish the entire



tenanted premises, thereby rendering the appellants remediless and dispossessed.

5. Accordingly, it is urged that the conduct of Mr. Avik Kumar Sengupta, in collusion with the respondents/landlords, amounts to a fraud upon the Court as well as upon the appellants themselves. It is submitted that the appellants, having been misled and prejudiced by such fraudulent acts, cannot be made to suffer the drastic consequences of the demolition of the tenanted premises which occurred solely because of the wrongful withdrawal of their appeal. It is said by the learned Advocate that the said Constituent Attorney intentionally and with a *mala fide* intention handed over the tenanted premises in favour of the landlord/respondents.
6. Thereafter an application was preferred at the behest of the transposed appellants with a prayer for re-transpose them as appellants and that prayer was allowed and this appeal was restored to its original file and position after setting aside the order of the dismissal.
7. It is now contended on behalf of the appellants that the situation has reached such a stage that if no order of injunction is passed by this Court restraining the respondents from alienating, encumbering or otherwise disposing of the newly constructed building, which has allegedly been erected upon the schedule tenanted premises, then



the appellants shall suffer irreparable loss and injury.

8. The learned Advocate for the appellants submits that the appellants, being the erstwhile tenants, have a direct and substantial interest in the subject property. It is argued that the respondents/landlords, having demolished the original tenanted structure, have unlawfully raised a new construction upon the same land during the pendency of the dispute. In such circumstances, there is a grave apprehension that unless the respondents are restrained by an appropriate interim order, they may proceed to create third-party interests in respect of the newly constructed building. Such alienation or encumbrance would not only alter the nature and character of the subject matter of the dispute but would also defeat the very object of the appeal.
9. Accordingly, it is contended that an order of injunction is imperative to safeguard the interest of the appellants and to ensure that the subject matter of the appeal remains intact and protected till the final adjudication of the dispute. Unless the respondents are restrained from alienating, transferring, encumbering or otherwise dealing with the newly constructed premises, the appellants will suffer irreparable loss and injury, which cannot be compensated by any monetary or other means.



10. I find that the matter should be heard after exchange of affidavits.

11. Respondents/ landlord is directed to submit affidavit-in-opposition within seven days from this date and affidavit-in-reply, if any thereto, within three days thereafter.

12. Let this matter appear in the list on **9th September, 2025** at **2:00 P.M.**

(Prasenjit Biswas, J.)