



Form No.J(2)

IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
Appellate Side

Present : The Hon'ble Mr. Justice Sabyasachi Bhattacharyya
&
The Hon'ble Mr. Justice Supratim Bhattacharya

FMA 349 of 2026
with
CAN 1 of 2026
with
CAN 2 of 2026

Sri Manajit Chandra and Anr.
Vs.
Sri Nikhil Chandra and Ors.

For the appellants : Mr. Siddhartha Sarkar,
Mr. Sourav Gupta, Advs.

For the defendant/
respondent no. 1 : Mr. Uday Narayan Betal,
Ms. Mohua Palit, Advs.

Heard on : July 27, 2026.

Judgment on : July 27, 2026.

Sabyasachi Bhattacharyya, J.:

1. In view of the relief in the appeal being primarily sought against the defendant/respondent no. 1, service of notice on the other respondents is dispensed with.



2. Affidavit-in-opposition filed by the defendant/respondent no. 1 today is kept on record.
3. In view of the short questions involved in the appeal, the same is taken up for hearing along with the application.
4. The appeal arises out of a partition suit filed by the plaintiffs/appellants. In connection with the said suit, an *ex parte* ad interim order was initially passed in favour of the plaintiffs/appellants, restraining the defendant/respondent no. 1 from making any construction on the suit property.
5. By the impugned order, a subsequent application for variation of such order under Order XXXIX Rule 4 of the Code of Civil Procedure, filed by the defendant/respondent no. 1, was allowed, thereby permitting the defendant/respondent no. 1 to make further construction of one more storey on the single-storied construction already standing on the suit property.
6. Learned counsel for the appellants argues that such order was passed without putting in a condition that the construction has to be sanctioned by a duly authorized sanction plan obtained from the appropriate authority.
7. Learned counsel for the defendant/respondent no. 1 argues that the initial order of ad interim injunction was modified under Order



XXXIX Rule 4 of the Code due to suppression of material facts by the plaintiffs/appellants at the time of obtaining the *ex parte* order of injunction.

8. In the plaint, it has been alleged that the defendant/respondent no. 1 is raising construction by converting a portion of the pond, of which the suit property is comprised, by bringing in mud from outside. However, initially, a Commission was sought by the appellants, which was not proceeded with, upon which the defendant/respondent no. 1 took out an application for local inspection under Order XXXIX Rule 7 of the Code of Civil Procedure. Pursuant thereto, a Commissioner's report was filed, which was considered in the impugned order, from which it was evident that only a portion of the suit property is a water-body, whereas the rest is solid land, on which there are other buildings standing. More importantly, it is argued that the plaintiffs/appellants themselves have already erected a two-storied building on the suit property itself, where they are now residing. Thus, it is argued that the learned Trial Judge was justified in permitting the defendant/respondent no. 1 to make similar construction of a two-storied building, in terms of a Government scheme, since the first storey thereof has already been constructed. Learned counsel for the defendant/respondent no. 1 further argues



that under the said scheme, no separate sanction plan is required to be obtained.

9. Learned counsel for the plaintiffs/appellants, although agreeing in principle to the legal proposition that a construction under a Government scheme does not require a separate sanction plan, contends that the second storey intended to be constructed by the defendant/respondent no. 1 is beyond such scheme.

10. Thus, for the said second storey, it is urged that a sanction plan ought to have been obtained by the defendant/respondent no. 1.

11. While considering the impugned order, we find that the learned Trial Judge, in a cursory manner, referred to the rival contentions of the parties and the Commissioner's report, without adverting to the contents of the same or the merits of the matter.

12. Although we are of the opinion that in principle, the learned Trial Judge was justified in granting permission to the defendant/respondent no. 1 to construct a second storey with the rider that it would be without the respondent no. 1 claiming any equity, at his own cost, and with the undertaking that such construction shall be demolished and the entire cost of such demolition shall be borne by the defendant/respondent no. 1 if any order is passed against them, still, we cannot overlook the fact that a



rider as to the construction being in accordance with a duly obtained sanction plan, if required in law, ought to have been put in, since a party cannot be permitted to make an unauthorized or illegal construction with the blessings of a court order.

13. Although the defendant/respondent no. 1 may be justified in submitting that such point was not raised before the learned Trial Court, at least as evident from the impugned order, still, such a rider is a *sine qua non* in an order permitting a party to make a construction.

14. Since there remains an unresolved dispute between the parties as to whether the construction of the second storey comes within the ambit of the Government scheme allegedly obtained by the respondent no. 1, thus not requiring any sanction, which was not addressed by the Trial Court, it would be prudent for us to relegate the matter back to the learned Trial Court to consider such aspect, of the matter with liberty to the parties to advance arguments relying on the documents on record before the learned Trial Court, including the scheme in question.

15. Hence, FMA 349 of 2026 is allowed on contest, thereby setting aside Order No. 9 dated February 18, 2026 passed by the learned Civil Judge (Senior Division) at Ghatal, District – Paschim Medinipur



in Title Suit No. 218 of 2025 and remanding the application under Order XXXIX Rule 4 of the Code of Civil Procedure filed by the defendant/respondent no. 1 for variation of the *ex parte* ad-interim order initially passed on December 3, 2025 by the learned Trial Judge. The learned Trial Judge shall re-adjudicate the said application in the light of the above observations, inter alia by ascertaining whether the disputed construction is being made under a Government Scheme, if so, whether the Scheme permits a second storey to be built and whether a sanction plan from the appropriate authority is required to raise a construction under the said Scheme, and pass a reasoned order advertent to the Scheme under which the defendant/respondent no. 1 is allegedly making the construction and as to the necessity or lack of it for any prior sanction to be obtained for the construction of the second storey by the defendant/respondent no. 1 under the said scheme.

16. It is made clear that in principle, this Court is *ad idem* with the order of the learned Trial Judge to the extent that the respondent no. 1 was permitted to make such construction, if otherwise entitled under any Scheme and in law to do so, with the safeguard that such construction shall be at the own cost of the respondent no.1, without claiming any special equity therefor, and on the undertaking that



respondent no. 1 will demolish the said construction if directed by the Court to do so. Thus, upon the aforesaid consideration, the learned Trial Judge shall grant similar relief to the defendant/respondent no. 1, only subject to a rider as to a sanction plan being a pre-requisite of such construction, if in the opinion of the Trial Court, such plan is deemed necessary upon a perusal of the concerned Government Scheme. It is expected that such exercise shall be completed within four weeks from the date of communication of this order to the learned Trial Judge.

17. CAN 1 of 2026 and CAN 2 of 2026 are consequentially disposed of as well.

18. No order as to costs.

19. Urgent certified copies of this judgment, if applied for, be supplied to the parties upon compliance of requisite formalities.

I agree.

(Sabyasachi Bhattacharyya, J.)

(Supratim Bhattacharya, J.)