

36
25.08.2025
Ct. No.-6
D.Hira

C.O. 2985 of 2025

Apurba Sekhar Haolader & Ors.

Vs.

Soma Chowhan & Ors.

Mr. Partha Pratim Roy,
Mr. Debayan Sen,
Mr. Samriddha Sen,
Mr. Karanjeet Sharma,
Mr. Niket Ojha,
Ms. Deepti Priya

...for the petitioners

Mr. Anindya Basu,
Mr. Amit Kumar Saha.

,... for the respondents

Affidavit-of-service filed in Court today is taken on record.

On the prayer of the learned advocate for the petitioners, leave is granted to the learned advocate on record of the petitioner to amend the cause title of the Civil Revision Application by adding the left-out parties, here and now.

This application under Article 227 of the Constitution of India is at the instance of the added respondents in Miscellaneous Appeal No. 36 of 2025 and is directed against an order dated March 17, 2025 and the consequential order passed by the learned District Judge, South 24 Parganas at Alipore.

The opposite party nos. 1 and 2 filed a suit for declaration of tenancy right under the proforma opposite parties herein and for restoration of possession on

recovery of possession from the proforma opposite parties herein in respect of the suit property and for mandatory injunction directing the proforma opposite parties herein to execute a fresh tenancy agreement and also issue rent receipts in favour of the opposite party nos. 1 and 2 in respect of the suit property and for permanent injunction restraining the defendants and their men and agents from making any obstruction and/or disturbances in the matter of free egress and ingress and/or from causing any obstruction and disturbances in the matter of peaceful possession user and enjoyment of the suit property and/or from causing any construction after demolishing the kancha structures of the opposite party nos. 1 and 2 in the suit property and/or from changing the nature and character of the suit property and/or from transferring, alienating and/or from inducting any third party and/or parting with possession of the suit property and/or handing over any portion of the suit property and/or from creating any third party interest in any manner whatsoever.

After filing the said suit, the opposite party nos. 1 and 2 have applied under Order 39 Rule 1 and 2 of the Code of Civil Procedure, praying for temporary injunction.

The learned Trial Judge, by an order dated January 30, 2025, refused to pass an *ad interim* order of injunction. Being aggrieved by such order, the petitioners preferred a miscellaneous appeal being No. 36

of 2025 before the learned District Judge, South 24 Parganas at Alipore.

On an application under Order 39 Rule 1 and 2 of the Code of Civil Procedure being moved, the learned District Judge passed an *ad interim* order of injunction restraining the defendants/respondents from changing the nature and character of the tenanted portion of the plaintiffs/opposite party nos. 1 and 2 in the suit property and/or from creating any addition, alteration or construction thereof and /or from creating third party interest in respect of the suit property without due process of law till March 17, 2025.

Thereafter, the petitioners filed an application under Order 1 Rule 10(2) of the Code of Civil Procedure in Miscellaneous Appeal No. 36 of 2025 praying for adding the present petitioners as party respondents in the said miscellaneous appeal.

The learned District Judge, South 24 Parganas at Alipore, by the order dated March 17, 2025, allowed the application under Order 1 Rule 10(2) of the Code of Civil Procedure thereby adding the present petitioners as respondent nos. 5, 6, 7 and 8 in the miscellaneous appeal.

The learned Judge of the Appellate Court extended the *ad interim* order of injunction till the next date.

Mr. Roy, learned advocate appearing for the petitioners submits that the petitioners purchased the

suit property by virtue of several deeds of conveyance long prior to the filing of the instant suit. He submits that by suppressing the fact of purchase of the property by the petitioners, the instant suit was filed claiming declaration of tenancy right as against erstwhile owners and after obtaining an *ad interim* order of injunction, filed an application for addition of party in the miscellaneous appeal and praying for extension of the *ad interim* order of injunction to operate as against the added parties.

Mr. Roy further submits that since the petitioners were not parties in the suit, they could not have been added as party respondents in an appeal filed under the provisions of Order 43 Rule 1 (r) of the Code of Civil Procedure. He further submits that in such an appeal the provisions of Order 41 Rule 20 of the Code of Civil Procedure cannot have any manner of application. In support of such contention, he placed reliance upon a decision in the name of ***Monjiram Indrachandra vs. Sheth Maneklal Mansukhbhai*** reported in ***ILR (Vol. LIII) (page 598)***.

Learned advocate appearing for the opposite parties submits that the opposite party nos. 1 and 2 were not aware of the transfer of the suit property by the proforma opposite parties herein to the present petitioners at the time of filing of the suit.

He further submits that immediately after coming to know of such transfer, the opposite party nos. 1 and 2

applied for addition of the present petitioners in the miscellaneous appeal.

He submits that since the present petitioners are carrying on construction in the suit property, the prayer was made for extension of the order of injunction as against the present petitioners.

He further submits that an application under Order 1 Rule 10(2) of the Code of Civil Procedure has also been filed by the opposite parties before the learned Trial Judge and the present petitioners have also been added as party defendants in the said suit.

He further submits that no letter of attornment was served upon the opposite party nos. 1 and 2 at any point of time either by the erstwhile owners or by the present petitioners.

After hearing the learned advocate for the parties, this Court finds that the miscellaneous appeal has been filed against an order refusing to pass an *ad interim* order of injunction.

The scope of such an appeal is very much limited as the Appellate Court has to consider whether the learned Trial Judge on the basis of the materials available before the learned Trial Judge that is, the plaint and the application under Order 39 Rule 1 and 2 as well as documents annexed thereto, was right in refusing to pass an *ad interim* order of injunction.

After going through the plaint, this Court finds that it has been specifically admitted in paragraph 27 of the plaint that the defendants that is the proforma opposite parties herein have illegally and forcefully with the help of the local goons and anti-social elements demolished the structure of the scheduled property and dispossessed the plaintiff from the suit property thereby throwing their household articles, ornaments and goods in street on December 16, 2024 and in spite of vehement objections and resistance, the defendants by their high handed activities succeeded to dispossess the plaintiff from the suit property and also started construction work over the suit property.

It was further stated in the said paragraph that the suit property is situated in the extreme western side and the defendants prior to dispossession of the plaintiff started construction on the other portion of the property and after dispossessing the plaintiff extended the construction work over the suit property.

From the averments made in the plaint, this Court prima facie finds that the suit property is only a portion of a large chunk of land and it is the admitted case of the opposite parties that the construction in respect of the other portions started long before and after dispossessing the opposite parties/defendants that the proforma opposite party nos. 1 and 2 have also extended their construction work in respect of the portion where the suit

property was alleged to be in existence prior to its demolition.

From the admitted case of the plaintiff, it is evident that at present there is no existence of the suit property. The opposite party nos. 1 and 2 claims to have been dispossessed on December 16, 2024 and the learned Judge of the Appellate Court extended an *ad interim* order of injunction petitioners only by an order dated March 17, 2025. An order dated March 17, 2025 also does not record any finding as to why an *ad interim* order of injunction was passed.

The learned Trial Judge rejected the prayer for ad interim injunction by assigning reasons. The learned Judge of the appellate Court without considering the reasons assigned by the learned Trial Judge passed an ad interim order of injunction merely because a different view is possible, which is impermissible in an appeal arising out of such an order.

It appears from the record that by an order dated March 27, 2025 the *ad interim* order of injunction was extended as against the defendant nos. 5 to 8. Since admittedly the opposite party nos. 1 and 2 were dispossessed from the suit property as on December 16, 2024 and have also admitted that the construction work started in the suit property immediately thereafter, this Court is inclined to pass an order of stay of operation of the order dated March 27, 2025.

The petitioners were not parties in the title suit. The present appeal is one under Order 43 Rule 1 (r) of the Code of Civil Procedure.

In **Monjiram Indrachandra (supra)**, it has been held that persons who were not parties to the original suit cannot be added as respondents in an appeal. It was further observed therein that if third parties were added in appeals, great complications would arise, as they would necessarily, in a large number of cases, raise points of fact which have never been considered by the learned Trial Judge.

This Court, is therefore, of the prima facie view that learned Judge of the Appellate Court could not have added the petitioners as party respondents in a Miscellaneous Appeal filed under Order 43 rule 1(r) of the Code. For all the reasons as aforesaid, this Court is of the view that the order extending the order of injunction as against the petitioners/added respondents in Misc. Appeal should be stayed. For such reasons, this Court is also inclined to pass an order of stay of operation of the order dated March 17, 2025 for a limited period.

There shall be stay of the order impugned till the end of the month of December, 2025 or until further orders, whichever is earlier.

List the matter under the heading “Contested Application” after 12 (twelve) weeks.

It is however made clear that pendency of the Civil Revision Application shall not preclude the learned Trial Judge from proceeding with the suit as well as the interlocutory application(s) in the meantime in accordance with law.

(Hiranmay Bhattacharyya, J.)