

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 Uday Kumar

FMAT No. 7 of 2025

Subrata Chowdhury
-vs-
Apurba Paul and another

For the appellant : Mr. Sounak Bhattacharya,
Mr. Anirban Saha Ray

For the respondent no. 1 : Mr. Milan Kanti Mondal

Heard on : February 10, 2025.

Judgment on : February 10, 2025.

Sabyasachi Bhattacharyya, J.:

1. On the prayer of the appellant, leave is granted to the appellant to file affidavit-of-service, as per previous direction, during the course of the day.

2. In any event, service was directed only on the respondent no. 1, who is the defendant no. 1 in the court below and only against whom the relief has been sought in the present matter, who is represented by counsel today.
3. On consent of the parties, the appeal itself is taken up for hearing along with the application.
4. The appellant, being the plaintiff in a suit for declaration of the appellant's tenancy right and consequential injunction, filed an application under Order XXXIX Rules 1 and 2 of the Code of Civil Procedure (in short "the Code") seeking temporary injunction restraining the defendants, including their men, agents and associates, from interfering, dispossessing and/or disturbing the possession of the plaintiff from the suit premises without due process of law.
5. Learned counsel for the appellant clarifies that although the expression "defendants" was mentioned in the prayer, the relief sought is restricted against the defendant no. 1/landlord.
6. The learned Trial Judge, by the impugned order, refused ad interim injunction to that effect only on the premise that no notice of the suit under Section 586 of the Kolkata Municipal Corporation Act, 1980 (in short "the KMC Act") has been

served on the Kolkata Municipal Corporation, the proforma defendant no. 2.

7. Upon hearing learned counsel for the parties, we find that since no relief has been sought against the Kolkata Municipal Corporation, a notice under Section 586 of the KMC Act is not required and is redundant.
8. As such, the very premise of the impugned order is bad in law. In any event, since the plaintiff has made out a *prima facie* case of tenancy, which is, of course, disputed by the respondent no.1/landlord, there is no reason as to why interim protection ought not to be granted to the plaintiff. Even otherwise, the defendant no. 1/landlord would be entitled to take recourse to due process of law for eviction of the appellant.
9. Accordingly, FMAT No. 7 of 2025 is allowed, thereby setting aside the impugned order dated January 6, 2025 passed by the learned Judge, Tenth Bench, City Civil Court at Calcutta, in Title Suit No. 39 of 2025 and granting ad interim injunction restraining the defendant no. 1 from disturbing the peaceful possession of the plaintiff in respect of the suit premises without due process of law till disposal of the injunction application in the court below.

10. The defendant/landlord/respondent no. 1 shall file his written objection to the injunction application in the trial court within February 24, 2025, upon entering appearance in the suit in the meantime.
11. It is expected that the learned trial Judge shall dispose of the injunction application thereafter as expeditiously as possible, positively within March 31, 2025, and thereafter make all endeavour to dispose of the suit itself at an early date.
12. It is further clarified that the above observations have been made only for the purpose of the present appeal and shall not influence the learned Trial Judge in any manner on merits in the final adjudication of the suit.
13. CAN 1 of 2025 is also disposed of accordingly.
14. There will be no order as to costs.
15. Urgent photostat certified copy of the order, if applied for, be supplied to the parties at an early date.

I agree.

(Uday Kumar, J.)

(Sabyasachi Bhattacharyya, J.)