

A.938
28.07.2025
Court No.6
BP

C.O. 205 of 2025

Al-Araf Munshi @ Mangal Munshi
-versus-
Rabiul Sk. & Ors.

Mr. Piyus Chaturvedi, Sr. Advocate
Mr. Ambu Bindu Chakraborty
... for the petitioner

Mr. Sumit Kumar Roy
Mr. Munshi Ashiq Elahi
..for the opposite party no.1

This application under Article 227 of the Constitution of India is at the instance of the defendant and is directed against an order being no.4 dated 9th September, 2024 passed by the learned Wakf Tribunal, West Bengal in Suit No. 21 of 2024.

By the order impugned the application under Order 39 Rule 1 and 2 of the Code of Civil Procedure was disposed of by restraining the petitioner herein and his men and agents from making any illegal construction over the suit property and also from creating any third party interest over the suit property till the disposal of the suit.

By referring to the grounds taken in the written objection to the injunction application Mr. Chaturvedi, learned senior advocate appearing for the petitioner submits that he has raised an issue of limitation and the locus standi of the opposite party herein to file a suit and pray for an order of temporary injunction. He submits that

such issue has not been considered and dealt with by the learned Tribunal while passing the order impugned. Since the issue of limitation and the locus standi goes to the root of the jurisdiction, this Court is of the considered view and the same ought to have been considered by the learned Tribunal prior to deciding the application for temporary injunction on merits. It does not appear from the order impugned that the issue with regard to the limitation and the locus standi of the opposite party was dealt with by the impugned order.

For such reasons, this Court is of the considered view that the matter should be remanded to the Wakf Tribunal for deciding the application under Order 39 Rule 1 and 2 of the Code of Civil Procedure in Suit No. 21 of 2024 afresh in the light of the aforesaid observations after giving opportunity of hearing to the respective parties. Accordingly the application under Order 39 Rule 1 and 2 of the Code of Civil Procedure is remanded to the learned Tribunal for deciding the same afresh after giving opportunity of hearing to the respective parties and by passing a reasoned order.

The learned Tribunal is requested to dispose of the injunction application as expeditiously as possible but preferably within a period of two months from the date of receipt of the server copy of this order.

There shall be an order restraining the defendant no.1/petitioner herein and his men and agents from

making any illegal construction over the suit property and also from creating any third party interest over the suit property till the disposal of the injunction application.

It is, however, made clear that all questions are left open to be decided by the Wakf Tribunal.

With the above observations, C.O. 205 of 2025 stands disposed of.

There shall be, however, no order as to costs.

Urgent certified photocopy of this order, if applied for, be supplied to the parties expeditiously on compliance of usual legal formalities.

(Hiranmay Bhattacharyya, J.)