

**F.M.A. 1241 of 2024
With
CAN 2 of 2025**

**Sri Swapan Kumar Maity & Anr.
VS.
Sri Rajkumar Maity & Ors.**

Mr. Sopurav Sen, Sr. Adv.,
Mr. Chhandak Dutta

...for the Appellants

Mr. Tapan Kr. Mahapatra

...for the Respondents

Re: CAN 2 of 2025

1. Affidavit-of-service filed on behalf of the appellants is taken on record.
2. The CAN is filed seeking modification of an order dated 08.01.2025 passed in the FMA 1241 of 2024 whereby and whereunder this Court declined to interfere with an order dated 25.01.2024 passed by the learned Trial Court in Title Suit No.5 of 2023 allowing an application under Order XXXIX Rule 4 of the Code of Civil Procedure filed by Defendant No.2 therein. This Court refused to interfere with the order after taking into consideration that the construction undertaken pursuant to the order passed by the Trial Court was compete in all respect, but subject to an undertaking to the effect that it would be demolished provided it exceeds the portion claimed by the Defendant.

3. The issue now raised in the CAN application is that the structure which has come up pursuant, and subsequent to the orders passed in the F.M.A. is not in accordance with law and *de hors* any statutory permission.
4. We are not inclined to modify the order passed in F.M.A. 1241 of 2024 taking into consideration such allegations subsequent to passing of the order dated 08.01.2025 passed in the F.M.A.
5. It is open to the applicant to take appropriate steps, if at all the structure as alleged is in violation of any statutory provisions such as planning standards, building bye-laws etc.
6. We make it clear that we have not made any expression on the merits of the allegation.
7. The application is dismissed.

(Madhuresh Prasad, J.)

(Prasenjit Biswas, J.)