

Court No. 6
(265719)

CO 870 of 2025

12.03.2025
(AD 11)
(S. Banerjee)

Dibyendu Mitra @ Dibyendu Kumar Mitra
Vs.
Joydeb Sarkar

Mr. Dipanjan Dutta
Mr. Raghunath Ghose
Ms. Pritha Ghose

...for the petitioner

This application is at the instance of the defendant and is directed against a judgment and order dated November 29, 2024 passed by the learned Additional District Judge, FTC-II, Alipore in Misc. Appeal No. 65 of 2022.

The opposite party herein filed a suit for declaration that the plaintiff's occupation in respect of the suit property is lawful and valid and for a permanent injunction restraining the defendant/petitioner herein and his men and agents from disturbing the peaceful possession of the opposite party in respect of the suit property.

The learned trial Judge by an order being no. 2 dated March 8, 2022 refused to pass an ex parte ad interim injunction in Title Suit No. 333 of 2022.

The opposite party preferred an appeal being a Misc. Appeal No. 65 of 2022 and the learned Additional District Judge, FTC-II, Alipore by a judgment and order dated November 29, 2024 allowed the miscellaneous appeal thereby restraining the petitioner herein from disturbing the possession of the plaintiff/opposite party herein in the suit property till the hearing of the application for temporary injunction.

It is well settled that there is no scope to pass any order of stay of operation of an order of injunction at the stage of admission as the same, if allowed, would amount to granting the final relief at the stage of admission.

Considering the fact that the miscellaneous appeal was allowed on November 29, 2024, this Court is of the considered view that ends of justice would be sub served if the hearing of the application under Order 39 Rule 1 and 2 is expedited.

Mr. Dutta, learned advocate appearing for the petitioner submits that written objection to the injunction application has already been filed and July 30, 2025 has been fixed for hearing of the temporary injunction application.

In view of the order sought and proposed to be passed, there is no necessity to direct issuance of any notice upon the opposite parties. However, the learned advocate on record of the petitioner shall be obliged to forward a copy of the application, along with a copy of this order, upon the opposite party or his learned advocate representing him before the learned trial Judge.

In the light of the submissions made by the learned advocate for the petitioner, CO 870 of 2025 is disposed of by requesting the learned Civil Judge (Jr. Division), 5th Court at Alipore to dispose of the application for temporary injunction as expeditiously as possible without granting any unnecessary adjournment to either of the parties.

Taking note of the fact that the application for temporary injunction is pending since the year 2022, and the next date has been fixed on July 30, 2025, liberty is granted to the petitioner to apply before the learned trial Judge for preponing the next date of hearing.

If such an application is made, the learned trial Judge shall consider such prayer after hearing the respective parties and pass an order accordingly.

(Hiranmay Bhattacharyya, J.)