

10.06.2025
Item No. 7.
Court No.37.
AB
(ID 266019)

**F.M.A. 710 of 2025
With
CAN 1 of 2025**

**Sri Susanta Kumar Mukherjee & Anr.
Vs
Susanta Pal & Others**

Mr. Tapas Kr. Dey,
Ms. Susmita Mondalfor the Appellants.

Mr. Prashant Agarwal,
Mr. Sudipta Das,
Mrs. Anamika Dasfor the Respondents.

Dictated by Arijit Banerjee, J.

1. By consent of the parties, the appeal and the application are taken up for hearing together.
2. Affidavit of service filed in Court today, be kept with the records.
3. This appeal is directed against a judgment and order dated March 4, 2025, whereby learned Judge, Commercial Court at Rajarhat, North 24 Parganas, refused to allow the appellants' prayer for temporary injunction under Order 39 Rule 1 and 2 read with Section 151 of the Code of Civil Procedure. The order was passed on contest.
4. The appellants say that a development agreement was entered into by and between the respondent nos.1 to 4 and the appellants in respect of the concerned property. The agreement was executed in 2012. The appellants started work and invested substantial sums of

money to the tune of at least Rs.40 Lacs. Suddenly the respondent nos.1 to 4, without terminating the agreement with the appellants, entered into a fresh agreement with the respondent nos.5 and 6 for the same development work. Subsequently, in 2017 the respondent nos.1 to 4 cancelled the Power of Attorney that they had executed in favour of the appellants. The appellants say that the project has now been completed by the respondent nos.5 and 6. There is every possibility of the flats that have been constructed being sold off to third parties. In that event, even if the appellants succeed in obtaining a money decree in the suit that the appellants have filed, the same will be a paper decree as nothing will be left against which such decree would be executable. Therefore, the appellants pray for an order of injunction restraining the respondents from alienating or dealing with the flats in the newly constructed building.

5. We have not called upon learned Advocate for the respondents to make submission.
6. We have carefully considered the judgment and order impugned in this appeal and also the submission made on behalf of the appellants. The suit filed by the appellants is purely a money suit. Apart from praying for a money

decree, no other relief has been prayed for. The learned Judge has rightly held that a pure money claim, which is at the highest an unsecured debt, ought not to be secured in ordinary circumstances. We also find that no case under Order 38 Rule 5 CPC has been made out.

7. Furthermore, the learned Judge has found and we also prima facie find that there is no material to support the appellants' case that they have invested approximately Rs.40 Lacs in the project. We also find that learned Judge has found, as a matter of fact at least prima facie, that the appellants failed to perform their part of the deal which prompted the respondent nos.1 to 4 to enter into a fresh agreement with the respondent nos.5 and 6.
8. Having considered the submission of the appellants and the judgment and order impugned before us, we are of the view that there is no such infirmity in the order of the learned Trial Judge which warrants our interference.
9. The appeal and the connected application are, accordingly, dismissed.
10. However, we request the learned Trial Court to expedite the trial of the suit and take the same

to its logical conclusion as soon as the business of the Court may permit.

11. All parties shall act in terms of server copy of the order downloaded from the official website of this Court.

(Rai Chattopadhyay, J.)

(Arijit Banerjee, J.)