

**IN THE HIGH COURT AT CALCUTTA
CIVIL REVISIONAL JURISDICTION
APPELLATE SIDE**

Before:

The Hon'ble Justice Hiranmay Bhattacharyya

C.O. 2368 of 2025

Halim Molla

Vs.

Mohibul Molla

For the Petitioner	: Mr. Dhiraj Kumar Trivedi, Sr.Advocate Mr. Pradip Kumar Kundu Mr. Kingsuk Mondal ... Advocates
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For the Opposite Party	: Mr. Suddhasatva Banerjee Mr. Abhishek Kabir Mr. Iqbal Kabir ...Advocates
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For the State	: Mr. Swapan Banerjee, AGP Mr. Nilotpal Chatterjee Mr. Diptendu Narayan Banerjee Mr. Debraj Sahu ... Advocates
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Reserved on	: 10.07.2025
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Judgment on	: 18.07.2025
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Hiranmay Bhattacharyya, J.:-

1. This application under Article 227 of the Constitution of India is at the instance of the defendant and is directed against an order dated May 15, 2025 passed by the learned Civil Judge (Junior Division), First Additional Court, Alipore, District 24 Parganas (South) in Title Suit No. 2113 of 2024.
2. By the order impugned, the application under Section 151 of the Code of Civil Procedure praying for implementation of the order dated 18.12.2024 with police help stood allowed.

3. The opposite party herein filed a suit for declaration that he is the sole and absolute owner of one shop room under the name and style of M/s. Tul Tul Bhandar and for permanent injunction restraining the petitioner, his men and agents from interfering with the smooth running of the business by the opposite party and from entering into the suit shop room forcibly and from disturbing the peaceful possession, use and occupation of the opposite party in the suit shop room.
4. In connection with the said suit the opposite party herein filed an application under Order XXXIX Rule 1 and 2 read with Section 151 of the Code of Civil Procedure inter alia praying for an order of temporary injunction restraining the petitioner, his men and agents from interfering with the smooth running of the business by the opposite party and from entering into the suit property forcibly and from disturbing the peaceful possession, use and occupation of the opposite party in the suit shop room and from causing any disturbance at the time of supervision, maintenance, preservation and protection of the suit shop room by the opposite party.
5. Upon hearing the plaintiff/opposite party herein, the learned Trial Judge passed an order dated December 18, 2024 thereby restraining the petitioner and his men and agents from disturbing the peaceful possession of the opposite party in any manner whatsoever till January 16, 2025.
6. The opposite party herein filed an application under Section 151 of the Code of Civil Procedure on February 7, 2025 praying for a direction upon the Officer-in-Charge of the local police station to maintain the solemn order dated December 18, 2024 passed by the learned Trial Judge. It was stated in the said application that on January 14, 2025 the petitioner along with his wife and two daughters tried to enter the shop room and the opposite party objected to such activity and tried to expel the persons out of the shop room. It was further stated in the said application that the opposite party was assaulted by the wife and daughter of the petitioner and they snatched all the documents of the plaintiff/ opposite party from the shop room. The opposite party claims to have informed the police and the police authority rescued the opposite party from such situation. It has been further stated in the said application that the opposite party lodged an FIR before the local police station.
7. After entering appearance in the said suit, the petitioner herein has filed the written statement denying the material allegations contained therein.
8. The petitioner filed a written objection against the application filed by the opposite party under Section 151 of the Code of Civil Procedure praying for police help. The petitioner herein denied that he along with his wife and two

daughters entered into the shop room and started threatening the opposite party with dire consequences. The petitioner also denied that the wife and the daughters of the petitioner assaulted the opposite party and snatched the documents of the opposite party in relation to the shop room and also tried to evict the opposite party with muscle power. It is the specific case of the petitioner that he is the owner of the shop room under the name and style of the Tul Tul Bhandar and he has been running the grocery business in the said shop room since 1984 with valid trade license issued by the concerned Gram Panchayat. The petitioner prayed for rejection of the application under Section 151 of the Code of Civil Procedure.

9. The learned Trial Judge allowed the application under Section 151 of the Code of Civil Procedure by the order dated May 15, 2025. The learned Trial Judge passed the following order-

“Order dated 15.05.2025

Parties files hazira along with extension petition.

Heard Ld. Advocate for plaintiff.

Ld. Advocate for the plaintiff submitted for police help to maintain the order dated 18.12.2024.

Ld. Advocate for the defendant raised strong objection.

Perused the record. Considered.

It is alleged by the plaintiff that inspite of order of injunction passed by this Court against the defendant, the defendant is violating the order dated 18.12.2024 passed by this Court.

It is the duty of this Court to see that its order be properly implemented by parties to the suit in its true spirit and sense.

Accordingly, the O/C Nodakhali P.S is hereby directed to see that the order dated 18.12.2024 passed by this Court in this suit is implemented properly by all concerned according to its true spirit and sense.

Let a copy of this order along with injunction order dated 18.12.2024 be forwarded to O/C Nodakhali P.S for information and necessary compliance.

*To **11.08.2025** for report from the O/c, Nodakhali P.S and hearing petition under Order 26 rule 9 of CPC filed by the defendant.*

Ad interim order be extended till date.”

10. Being aggrieved by the said order, the defendant has approached this Court by filing the instant application under Article 227 of the Constitution of India.
11. The instant Civil Revision Application was filed on July 1, 2025 and the same was taken up for hearing on July 2, 2025. When the Civil Revision Application was taken up for consideration on July 2, 2025, Mr. Trivedi, learned Senior Advocate appearing for the petitioner submitted that pursuant to the impugned order dated May 15, 2025, the Officer-in-Charge Nodakhali Police Station broke open the padlock of the suit property and after dispossessing the petitioner from the suit property has handed over possession of the same to the opposite party herein.
12. Considering the serious allegation made by the petitioner against the Officer-in-Charge, Nodakhali Police Station, this Court directed the Officer-in-Charge, Nodakhali Police Station to appear before the Court personally on 04.07.2025 at 10.30 AM and file a report as to what steps were taken by him pursuant to the order dated May 15, 2025. Petitioner was directed to serve a copy of the Civil Revision Application upon the opposite parties by registered post with acknowledgement due and file an affidavit of service on the next date.
13. The Civil Revision Application was thereafter taken up for hearing on July 4, 2025 and this Court directed the Inspector-in-Charge of Nodakhali Police Station to put a padlock on the main entrance door of the shop room with a direction upon him to keep the keys of the said padlock with him.
14. Pursuant to the aforesaid order, the Inspector-in-Charge Nodakhali Police Station filed a report dated July 7, 2025 wherein it has been stated that in compliance with the Order dated 4th July, 2025 the Inspector-in-Charge of Nodakhali Police Station has put the padlock on the main entrance door of the shop under the name and style of M/s. Tul Tul Bhandar and also deputed police personnel round the clock from their end to keep sharp vigil.
15. Mr. Trivedi, learned Senior Advocate appearing for the petitioner contended that the petitioner was in possession of the said shop room and the opposite party herein was not in possession of the suit shop room when the suit was filed and the ad interim order of injunction was passed. Mr. Trivedi contended that the opposite party herein filed a writ petition being WP No. 3437 of 2024 alleging inaction on the part of the police and prayed for issuance of writ in the nature of mandamus to command the police

authorities to take steps to restore the peaceful possession of the opposite party in the suit shop room. He further contended that the petitioner herein filed a written objection against the application under Section 151 of the Code of Civil Procedure for Police help but the learned Trial Judge without considering the said written objection allowed the application for police help by a non-speaking order. He further contended that the petitioners suffered an order merely on the basis of the allegations made by the opposite party without requiring the opposite party to prove the facts alleged in the application for police help. In support of such contention Mr. Trivedi placed reliance upon a decision of a co-ordinate bench in the case of **Joydev Das vs. Khandubala Das** reported at **(2012) 1 CHN 300**. He further contended that an order for police help should not be made on the mere asking of a party and in support of such contention he placed reliance upon a decision of another co-ordinate bench in **Gouri Das & Ors. Vs. Nani Bhattacharjee & Ors.** reported at **(2020) SCC Online Cal 2414**.

16. Mr. Suddhasatva Banerjee learned advocate representing the opposite party contended that the petitioner herein forcibly ousted the opposite party from the suit shop room in violation of the order of injunction. He submitted that Section 151 of the Code of Civil Procedure recognized the inherent power of the Court to prevent abuse of the process of Court and to do justice by immediately intervening under the situation which require prompt intervention by the Court. In support of such contention he placed reliance upon a decision of the Hon'ble Division Bench in the case of **Sujit Pal vs. Prabir Kumar Sen & Ors.** reported at **AIR 1986 (Cal) 220**. He further contended that the Court in exercise of its inherent power is bound to undo the wrong in the interest of justice. He contended that no technicality can prevent the Court from doing justice in exercise of its inherent powers. In support of such contention he placed reliance upon the decision of the Hon'ble Supreme Court in the case of **Delhi Development Authority vs. Skipper Construction Co. (P) Ltd. & Anr.** reported at **(1996) 4 SCC 622**. He contended that since the petitioner forcibly dispossessed the opposite party in violation of the order of injunction and took possession of the suit property, it is the duty of the Court to direct restoration of possession of the suit shop room to the opposite party with the aid of police.
17. Mr. Swapan Banerjee, learned Additional Government Pleader represented the Inspector-in-Charge of Nodakhali Police Station. Mr. Banerjee contended that the Police authority acted in terms of the direction passed by the learned Trial Judge and the police authorities are keeping strict vigil at the locale.

18. Heard the learned advocates for the parties and perused the materials placed.
19. The opposite party herein filed a suit for declaration of title and for permanent injunction in respect of the shop room under the name and style of M/s. Tul Tul Bhandar. The opposite party claims to be carrying on business from the said shop room upon taking prior licences from the concerned authority and paying taxes for carrying on business therefrom. The opposite party further claims that he is enjoying supply of electricity as a consumer of the West Bengal State Electricity Board at the suit shop room. In the plaint the opposite party alleged that the petitioner is trying to cause disturbance to the opposite party in various manner and is also trying to take forcible possession of the suit shop room.
20. Upon the application under Order XXXIX Rule 1 and 2 of the Code of Civil Procedure being moved by the opposite party herein, the learned Trial Judge passed an order on 18.12.2024 restraining the petitioner and his men and agents from disturbing the peaceful possession of the opposite party in any manner whatsoever till January 16, 2025.
21. By the said order the learned Trial Judge directed issuance of notice upon the petitioner to show cause within 15 days from the date of receipt of the notice as to why the opposite parties prayer for temporary injunction shall not be made absolute.
22. In the meantime, the opposite party, by a letter dated January 15, 2025, lodged a complaint before the Officer in Charge, Nodakhali Police Station alleging that the petitioner herein have put a padlock on the suit shop room in front of the police authority on 14.01.2025. The said complaint was registered as FIR no. 30/25 dated January 18, 2025.
23. On February 7, 2025, petitioner filed an application under Section 151 of the Code of Civil Procedure praying for a direction upon the Officer in Charge of Nodakhali Police Station to maintain the solemn order of the learned Trial Judge.
24. In the application under Section 151 of the Code of Civil Procedure the opposite party alleged that the petitioner is flouting the order of the learned Trial Judge and disturbing the opposite party in the running of the business from the suit shop room.
25. Thus, the opposite parties sought to make out a case of disobedience or breach of injunction.

26. Order XXXIX Rule 2A of the Code of Civil Procedure speaks of the consequence of disobedience or breach of injunction. Order XXXIX Rule 2A is a provision for execution of an order for temporary injunction and in case of disobedience of an order of temporary injunction, an aggrieved party has a remedy available under the provisions of Order XXXIX, Rule 2A of the Code.
27. It is well settled proposition of law that when there is a specific provision in the Code in respect of any matter it is not permissible for the Court to pass any order in respect of such matter under Section 151 of the Code of Civil Procedure.
28. A question that fell for consideration before the Hon'ble Division Bench in **Sujit Pal (supra)** was whether the Court has inherent power to grant a mandatory injunction for the purpose of granting relief to a person who has been dispossessed despite an order of temporary injunction. In **Sujit Pal (supra)** it was held that if a party who has been forcibly dispossessed from the suit property in utter violation of the interim injunction, it will be doing a great injustice to such party if he is asked to pursue the remedy under Order XXXIX Rule 2A as the Court cannot grant immediate relief to such party under the said provision. It was held that the procedure laid down in Order XXXIX Rule 2A is incapable of granting an immediate relief to a party who has been forcibly dispossessed in violation of an order of injunction and in such a case it cannot be said that the Court is powerless to grant relief to an aggrieved party in exercise of its inherent power. It was further held that the very object for which Order XXXIX Rule 2A has been enacted will be fulfilled by the grant of a temporary mandatory injunction and restoration of possession of the aggrieved party. It was further held that the inherent power of the Court is recognized in Section 151 of the Code of Civil Procedure and is in addition to the power conferred on the Court under the provisions of the Code and the Court concerned is to prevent abuse of the process of Court and to do justice by immediately intervening under situation which require such intervention by the Court.
29. The Hon'ble Supreme Court in **Delhi Development Authority** (supra) after noting several decisions of the High Court of Madras and Calcutta and more particularly the decision of the Madras High Court in the case of **Century Flour Mills Ltd. vs S. Suppiah And Ors.** reported at **AIR 1973 (Mad) 270** held that where an act is done in violation of an order of injunction, it is the duty of the Court, as a policy, to set the wrong right and not allow the perpetuation of the wrong doing.

30. There is no quarrel to the aforesaid proposition of law laid down in **Sujit Pal** (supra) and **Delhi Development Authority** (supra).
31. The issue that arises for consideration in the case on hand is not whether the Court has the power to pass mandatory injunction directing restoration of possession. The issue that falls for consideration in the instant case is whether the Court can pass an order for police help on the mere asking of a party.
32. The larger issue, however, is whether the opposite party could have sought for implementation of the order dated 18.12.2024 with police help.
33. By the order dated 18.12.2024, an order of injunction was passed which would remain operative till 16.01.2025. However, the opposite party alleges that the petitioner forcibly put the padlock on the shop room on 14.01.2025. Mr. Banerjee would contend that the order of injunction was subsequently extended from time to time and the same is still subsisting. This Court fails to understand as to how a prayer for extension of the order of injunction passed on 18.12.2024 could have been made on or after 16.01.2025 when admittedly the opposite party was not in possession of the shop room on and from 14.01.2025.
34. In such a factual matrix this Court holds that the opposite party herein could not have applied for implementation of the order of injunction passed on 18.12.2024 at a point of time when admittedly the petitioner was not in possession of the shop room.
35. The Inspection-in-Charge, Nodakhali Police Station, in his report dated 04.07.2025 stated that the police in compliance with the order of the learned Trial Judge dated 15.05.2025 ensured peaceful possession of the opposite party. The police report is, however, silent as to how the police authorities ensured possession of the opposite party when admittedly the opposite party was not in possession of the shop room from 14.01.2025.
36. By the impugned order dated 15.05.2025, the Officer-in-Charge Nodakhali Police Station was directed to see that the order dated 18.12.2024 is implemented in its true spirit and sense.
37. There is no quarrel to the proposition of law that the Court in exercise of its inherent power under Section 151 of the Code can direct restoration of possession in favour of a party who has been dispossessed in violation of an order of injunction.
38. In the case on hand, no order has been produced before this Court to show that the learned Trial Judge arrived at a finding that the petitioner

dispossessed the opposite party from the shop room in violation of an order of injunction. No order for restoration of possession of the shop room in favour of the opposite party was passed by the learned Trial Judge. When admittedly, the petitioner was in possession of the shop room at least from 14.01.2025, if not from an earlier point of time, the police authorities could not have ensured the possession of the opposite party in the shop room, in the absence of any order directing restoration of possession in favour of the opposite party in respect of the shop room.

39. Mr. Banerjee would vehemently contend that the petitioner did not file any written objection against the injunction application. Thus, according to Mr. Banerjee, the facts stated in the injunction application remained uncontroverted. Non filing of written objection cannot come to the aid of the opposite party in view of the specific admission made by the opposite party in the complaint that he has been dispossessed from the suit shop room before 16.01.2025.
40. That apart, the opposite party herein filed a writ petition being WPA No. 3437 of 2024 praying for issuance of a Writ of Mandamus directing the police authorities to take steps to restore possession of the suit shop room in favour of the opposite party herein. The said writ petition was disposed of by an order dated 24.02.2025 by observing that if the civil court directs the police authorities to act in a particular manner thereby rendering police assistance, in that case, the police would respect, obey and implement the order of the civil court.
41. The Writ Court directed that if the Civil Court directs the police authorities to act in a particular manner, the police would obey and implement the order of the Civil Court. The Writ Court left it for the Civil Court to take a decision with regard to rendering police assistance.
42. The opposite party approached the Writ Court praying for restoration of possession. However, the opposite party approached the learned Trial Judge alleging that the petitioner is creating disturbance in the running of the business of the opposite party in the suit shop room instead of praying for restoration of possession. Thus it is evident that the opposite party took contradictory and mutually destructive stand before two fora.
43. Petitioner filed a written objection against the application under Section 151 of the Code of Civil Procedure specifically stating therein that the petitioner is the owner of the shop room under the name and style of Tul Tul Bhandar and has been running grocery business therefrom since 1984 with valid trade license.

44. Thus, a dispute arose as to whether the petitioner or the opposite party was in possession of the suit shop room on the date of filing of the suit and the passing of the order of injunction on December 18, 2024.
45. Whether the opposite party was in possession of the suit shop room on the date of passing of the ad interim order of injunction and was forcibly dispossessed from the said room in violation of the order of injunction are disputed questions of fact which require adjudication.
46. In **Joydev Das (supra)** it was held that in appropriate case where (i) facts are not in dispute, and (ii) the Court is satisfied that a party bound by an order of injunction has violated and /or disobeyed the same (iii) thereby causing grave and serious injury to his adversary and (iv) ends of justice demand the court's interference by granting immediate relief to the party suffering injury, that recourse to Section 151 of the Code may be had for setting things right.
47. It was further observed in the said decision that in a case where the allegations made in the application under Section 151 of the Code has been denied by the other side, it was obligatory for the Trial Court for arriving at a definite conclusion on the rival claims to allow the parties to lead evidence. In the absence of such evidence it may be difficult for the Trial Court to return a specific finding that a party to the proceeding indulged in acts of violation of or disobedience to the order of injunction.
48. In **Joydeb Das (supra)** the learned Trial Judge after hearing the respective parties passed an order of temporary injunction which attained finality as the appeal arising out such order ultimately stood dismissed for default. On such facts it was held that the party to the lis ought not to suffer an order merely on the allegation made by the party in the absence of proof of the facts alleged.
49. In **Gouri Das (supra)**, the co-ordinate bench held that an order for police help should not be made on the mere asking of a party. Inherent power exercisable under Section 151 of the Code presupposes exercise of the same with much care, caution and circumspection.
50. As observed hereinbefore, facts are in dispute in the case on hand. Petitioner filed a written objection taking a specific stand which, the learned trial judge neither referred to in the impugned order nor considered the same. That apart the learned judge did not arrive at a specific finding that the petitioner has violated or disobeyed the order of injunction. This Court accordingly holds that the tests laid down in **Joydeb Das (Supra)** for grant

of police help has not been satisfied in the case on hand and for such reason, the impugned order calls for interference.

51. In the case on hand, the opposite party alleged that he has been forcibly dispossessed from the suit property in violation of an order of ad interim injunction.
52. A question arose in **Kochupennu Ambujakshi And Ors. vs Veluthakunju Vasu Channar And Ors.** reported at **AIR (1993) Kerala 62** as to whether the assistance of the police can be requested for to enforce an ad interim order of injunction. It was observed that it has to be made clear that such an order is only an ex parte order passed by the Court upon being satisfied that the purpose of the injunction order would be defeated in case notice is directed to be issued to the opposite party. The position is different in the case of a final order passed in an injunction petition. The observation made in a decision in the case of **George Mirante vs. State of Kerala** reported at **1990 (2) KLT 89** was reiterated that it would be premature and dangerous to enforce ex parte order of injunction as such orders are issued on the basis of averments contained in the plaint and affidavit of the plaintiff. The true picture emerges only after hearing both sides and for such reason it was held that it is imperative that police should not be allowed to intervene or interfere at this stage in matters of possession which entail civil disputes, especially when the matter is one in the interlocutory stage of proceedings. It was held that the Court shall not direct enforcement of an interim ex parte order with police aid and only a final order passed under Rule 1 and Rule 2 or Order XXXIX of the Code can be enforced with the assistance of the police.
53. The Hon'ble Supreme Court in the case of **P.R. Murlidharan vs. Swami Dharmananda Theertha Padar** reported at **(2006) 4 SCC 501** held that police protection can be granted when the Court is approached for protection of rights declared by a decree or by an order passed by a Civil Court. It has been clarified that it cannot be extended in cases where rights have not been determined either finally by the civil court or at least at an interlocutory stage in an unambiguous manner.
54. It therefore, follows that when the rights of the parties have been determined either finally by the Civil Court or at least at an interlocutory stage in an unambiguous manner, the party can approach the Court for police help for protection of the rights declared by a decree passed by a Civil Court or at the interlocutory stage in an unambiguous manner.
55. The ad interim order of injunction passed by the learned trial judge on 18.12.2024 cannot be said to have determined the rights of the parties at an

interlocutory stage in an unambiguous manner as the same was passed only upon hearing the plaintiff and on the basis of the affidavit filed by the plaintiff.

56. This Court, therefore, holds that the learned trial judge was not right in passing an order of police help to implement an ad interim order of injunction which was passed only after hearing the plaintiff/opposite party herein.
57. As is evident from the order passed by the learned Trial Judge as extracted hereinbefore that the learned Trial Judge did not return a specific finding that the petitioner indulged in acts amounting to violation of or disobedience to the order of injunction. The learned Trial Judge, however, proceeded to pass an order for police help merely by relying on the allegation made by the opposite party herein as would be evident from the impugned order extracted hereinbefore which has been deprecated in **Joydeb Das (supra)**.
58. To the mind of this Court, the learned Trial Judge was not right in directing implementation of the order of injunction with police help when admittedly the opposite party was not in possession at the point of time when the application was filed and the impugned order was passed.
59. For all the reasons as aforesaid, this Court is inclined to interfere with the order impugned.
60. It is the specific case of the opposite party that the petitioner put padlock on the shop room on 14.01.2025. Therefore, admittedly the opposite party was not in possession of the shop room on and from 14.01.2025. No order has been passed by any Court of Law directing restoration of possession in favour of the Opposite Party. In the absence of any specific finding in the order impugned that the petitioner came into possession of the shop room in violation of the order of injunction, petitioner could not have been removed from the shop room either by the police authority or the opposite party herein.
61. For such reason, this Court is of the considered view that the police authority should be directed to handover the key(s) of the padlock, put on the shop room, pursuant to the order passed by this Court, to the petitioner.
62. The impugned order directing police help stands set aside. The Civil Revision Application stands allowed with the following directions
 - (i) The Inspector in Charge, Nodakhali Police Station is directed to handover the key(s) of the padlock put on the shop room, pursuant to this order, to the petitioner forthwith.

(ii) The learned Trial Judge is directed to dispose of the application for temporary injunction in accordance with law upon giving an opportunity to the petitioner to file a written objection to the injunction application, if not already filed and after hearing the respective parties and without being influenced by the fact that this Court directed the police to handover the key(s) to the petitioner.

63. There shall be, however, no order as to costs.
64. Urgent photostat certified copies, if applied for, be supplied to the parties upon compliance of all formalities.

(HIRANMAY BHATTACHARYYA, J.)

Later: Date: 18.07.2025

After this judgement is pronounced, Mr. Chatterjee, learned advocate representing the Inspector-in-Charge, Nodakhali Police Station, submits that pursuant to the order dated July 17, 2025, the Sub-Inspector of Police of Nodakhali Police Station is present in court with the key(s) of the padlock which was put on the shop room.

Mr. Chatterjee, learned advocate, hands over the key(s) of the padlock to the learned advocate-on-record of the petitioner in court today.

Learned advocate-on-record of the petitioner shall give an acknowledgment addressed to the Sub-Inspector of Police, Nodakhali Police Station, who is present in court today, that he has received the key(s) of the padlock of the shop room.

Mr. Chatterjee submits that a seal has been put on the padlock by the police authorities and the same shall be removed in course of this day.

Such submission of Mr. Chatterjee is placed on record.

(HIRANMAY BHATTACHARYYA, J.)