

Sl. 14
17.07.2025
Court No.6
BP

C.O. 2487 of 2025

Samir Kumar Dey
-versus-
Anup Kumar Kundu & Ors.

Mr. Surya Prasad Chattopadhyay
Mr. Arjun Samanta
Ms. Trishtrya Mancherji
..for the petitioner

Mr. Joydeep Das
Mr. Soumyadeep Ghosh
..for the opposite parties

Affidavit of service filed in Court today is taken on record.

This application under Article 227 of the Constitution of India is at the instance of the plaintiff and is directed against a judgement and order dated 17th June, 2025 passed by the learned Additional District Judge, 7th Court at Barasat in Misc. Appeal No. 111 of 2024.

By the said judgement and order the learned judge of the appellate court reversed the order dated 21st May, 2024 passed by the learned Civil Judge (Junior Division), Bidhannagar in Title Suit No. 156 of 2024. The petitioner herein filed a suit for declaration that the ex parte judgement and decree dated March 20, 2019 in Title Suit No. 766 of 2018 is nullity and for restoration of possession of the schedule property in favour of the plaintiff and for permanent injunction restraining the opposite parties in any way encumbering the constructed area at the same location to any third party. The

petitioner claims to be a lessee in respect of the suit property. The petitioner states that the opposite parties herein filed a suit being Title Suit No. 766 of 2018 for eviction of the petitioner and such suit was decreed ex parte on March 20, 2019. Challenging the said decree the petitioner has filed the instant suit.

Mr. Chattopadhyay, learned advocate for the petitioner submits that the ex parte decree in Title Suit 766 of 2018 was obtained without serving any notice upon the petitioner. He further submits that the petitioner has filed a miscellaneous case under Order 9 Rule 13 of the Code of Civil Procedure praying for setting aside the ex parte decree. He submits that the petitioner has filed the instant suit praying for a declaration that the ex parte decree is a nullity.

The learned trial judge by an order dated May 21, 2024 passed an ad interim order of injunction restraining the defendant no.5 and her men and agents from creating any third party interest in respect of the suit property and the defendants and their men and agents were restrained from making any construction work upon the suit property till the next date.

The learned trial judge after considering the averments made in the plaint along with the documents filed by the petitioner observed that it prima facie appears that the plaintiff has bona fide interest in the suit property which needs to be adjudicated by taking evidence. The learned trial judge further recorded that

the three legal tests for passing an order of injunction has been satisfied in the case on hand and being satisfied with the urgency involved in the instant matter passed an ad interim order of injunction.

The learned judge of the appellate court, however, set aside the ad interim order of injunction on the ground that the petitioner is not in possession of the suit property.

It is not in dispute that the petitioner is not in possession of the property as he has been evicted through the process of execution. Since a miscellaneous case under Order 9 Rule 13 of the Code of Civil Procedure is pending and the petitioner has filed the instant suit praying for a declaration that the ex parte judgement and decree was obtained by fraud and the same is a nullity, this Court is of the considered view that the petitioner is entitled to an interim order.

The learned advocate appearing for the opposite parties submits that the portion where the petitioner was in occupation is still lying vacant and no construction has been made till date.

Such submission of the learned advocate for the opposite parties is placed on record.

Mr. Chattopadhyay, learned advocate appearing for the petitioner submits that no written objection to the injunction application has been filed by the opposite parties till date.

As prayed for by the learned advocate for the opposite parties, four weeks time is granted to the opposite parties to file a written objection to the temporary injunction.

The learned trial judge is requested to make an endeavour to see that the application for temporary injunction is disposed of as expeditiously as possible without granting any unnecessary adjournments to either of the parties.

There shall be an order of ad interim injunction restraining the defendants from raising any construction on the suit property and from creating any third party interest in the suit property till the disposal of the temporary injunction application.

Parties will be at liberty to approach the learned trial judge for fixing a date of hearing of the temporary injunction application.

With the above observations and directions, C.O. 2487 of 2025 stands disposed of.

Order dated 17.06.2025 passed in Misc. Appeal No. 111 of 2024 stands set aside.

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.)