

24.07.2025
Item no. 9.
Court No.6.
AB

C. O. 2546 of 2025

**Sri Subodh Kumar Mondal
Vs
Sarajakshya Palak & Ors.**

Mr. Partha Pratim Roy,
Mr. Tridip Mishra,
Ms. Poulami Chakraborty,
Mr. Saikat Gayenfor the Petitioner.

This application under Article 227 of the Constitution of India is at the instance of the plaintiff and is directed against an order dated March 1, 2025 passed by the learned Civil Judge (Sr. Division), Kandi, Murshidabad in Title Appeal No.02 of 2025.

By the order impugned, the application under Order 39 Rule 7 of the Code of Civil Procedure was allowed ex parte.

Mr. Roy, learned advocate appearing for the petitioner submits that the application for local inspection was allowed ex parte without any finding being recorded as to why the same was allowed ex parte.

After going through the materials on record, this Court finds that such application was filed in aid of an application under Order 39 Rule 1 and 2 of the Code of Civil Procedure. A copy of the said application under Order 39 Rule 1 and 2 of the Code of Civil Procedure has been annexed with the civil revision application

wherefrom it appears that the opposite party has stated that the petitioner herein has started to raise construction of boundary wall without making any regular survey and in course of raising boundary wall the respondent no.1 is trying to encroach some portion of the land of the appellants with the help of some miscreants. Thus, there was urgency involved in the instant matter.

Order 39 Rule 7(1) of the Code of Civil Procedure states that the Court may, on application of any party to a suit and on such terms as it thinks fit make an order for the detention; preservation or inspection of any property which is the subject matter of such suit or as to which any question may arise therein.

Sub Rule (3) of Rule 8 states that before making an order under Rule 6 or Rule 7 on an application made for the purpose, the Court shall, except where it appears that the object of making such order would be defeated by the delay, direct notice thereof to be given to the opposite party.

Thus, it is evident that before passing an order of local inspection, notice should be issued upon the opposite party unless it appears to the Court that the object of making such order should be defeated in directing notice to be given to the other side.

The learned Trial Judge has recorded that such an application was filed in aid of injunction. This

Court has already observed that there is urgency in this matter. Therefore, this Court is of the considered view that in a case of this nature, the object of making such an order would be defeated if notice was directed to be issued upon the opposite party prior to passing the order of local inspection. Though no specific finding with regard to the urgency has been recorded in the impugned order, but since the materials on record reveal that there is urgency, only for non-recording of reason, the order is not liable to be interfered with in exercise of jurisdiction under Article 227 of the Constitution of India.

At this stage, Mr. Roy, learned advocate for the petitioner submits that subsequently, the application for injunction has been allowed and order of temporary injunction has been passed in favour of the opposite party herein. It is, however, made clear that the observations made hereinbefore are only for the purpose of deciding the civil revision application and the same shall not prejudice the parties in other proceedings. The petitioner is left free to challenge the order allowing the prayer for temporary injunction in accordance with law, if so advised.

With the aforesaid observation, C.O. No. 2546 of 2025 stands disposed of.

(Hiranmay Bhattacharyya, J.)

