

09.09.2025
SL No.13
Court No.16
(gc)

**FMAT 305 of 2025
CAN 1 of 2025**

**Srimatya Kalyani Dhara & Ors.
Vs.
Rabindra Dhara & Ors.**

Mr. Tanmay Mukherjee,
Mr. Pradip Paul,
Mr. Gourab Ghosh,
Ms. Renesa Dey
...for the Appellants.

1. Considering the hardship of the defendant no.6 as would appear from the impugned order, the learned Trial Court allowed the defendant no.6 to make construction subject to three conditions laid down in the said order. The learned Trial Court has taken into consideration that the defendant no.6 started construction of the house prior to the filing of the suit, the said discretion was exercised.
2. Although it is submitted on behalf of the appellants that the sanction plan is of 2025 and the ad-interim order of injunction was passed on 13th September, 2022 and the sanction plan may have been obtained without disclosing the order directing the parties to maintain status quo with regard to the possession, nature and character but having regard to the fact that now the defendant no.6 is having a sanction plan and has sought for variation of the ad-interim

order of injunction, in the facts and circumstances of the case, we do not find any reason to interfere with the discretion exercised by the learned Trial Court.

3. The said order is also in conformity with the decision of this Court in several matters including the judgments of this Court in ***Shrimati Satu Bala Dassi & Ors. Vs. Chaturanan Saha & Ors.*** reported in ***(2014) 3 WBLR (Cal) 318*** and in the case of ***Sanghati Pal vs. Prakash Adhuryya & Ors.*** reported in ***2009 (2) CLJ (Cal) 153***.
4. The learned Counsel for the appellants/plaintiffs has submitted that the plaintiffs may be permitted to make an application for appointment of Commissioner in the pending proceeding in order to oversee the construction to be made by the defendant no.6 so that the defendant no.6 does not misuse the order passed in favour of the defendant no.6.
5. It would be open for the plaintiffs to take appropriate steps in this regard. However, we make it clear that this order shall not be construed as giving any permission to the plaintiffs to make any such application in the pending proceeding.

6. Accordingly, the appeal and the application are disposed of.
7. However, there shall be no order as to costs.
8. Urgent Photostat certified copy of this order, if applied for, be supplied to the parties upon compliance of all necessary formalities.

(Soumen Sen, J.)

(Apurba Sinha Ray, J.)