

Form No. J(2)

In the High Court at Calcutta

Civil Appellate Jurisdiction

Appellate Side

Present: The Hon'ble Justice Sabyasachi Bhattacharyya
And
The Hon'ble Justice Uday Kumar

F.M.A. 1146 of 2024
IA No: CAN 1 of 2024

Sri Subhasis Palui
Vs.
Sri Utpal Koley

For the appellant	:	Mr. Partha Pratim Roy Mr. Pintu Karar Mr. Akashdeep Mukherjee Mr. Sabab Uddin Laskar
For the respondent	:	Mr. Pinaki Ranjan Mitra
Heard on	:	24.06.2025
Judgment on	:	24.06.2025

Sabyasachi Bhattacharyya, J.:-

1. The appellant has assailed an order dismissing his application for temporary injunction filed in a suit for specific performance of a contract.

2. Since several questions of law and fact are involved in the appeal, the same is admitted to be heard on the grounds taken in the Memorandum.
3. In view of the peculiar circumstances of the case, we take up the appeal itself for hearing along with the connected application by dispensing with unnecessary formalities.
4. At the outset, learned counsel appearing for the defendant/respondent points out that in the meantime, the suit property has been transferred in favour of a third party.
5. Although we are of the opinion that the plaintiff/appellant should be at liberty to implead the third party and ask for an injunction against the said third party, it is rightly pointed out by learned counsel for the appellant that unless the present appeal is decided on merits insofar as the legality of the impugned order is concerned, the said order would deter the plaintiff from praying for an order of injunction on the self-same averments against the transferee as well.
6. Accordingly, we take up the appeal for hearing on merits.
7. The learned trial Judge dismissed the temporary injunction application of the plaintiff/appellant on two-fold grounds.

8. First, that the appellant failed to produce any document to prove that the appellant is in possession of the suit property, despite the plaint case that possession was delivered along with execution of the agreement, of which specific performance has been sought in the suit.
9. Secondly, the appellant failed to produce any document to show that the balance consideration amount was paid within the period of three months as agreed in the agreement.
10. However, we find from the materials-on-record and from the submission of parties that the plaintiff/appellant has made out a case that although originally possession was delivered simultaneously with the execution of the agreement, subsequently the plaintiff/appellant was dispossessed by the defendant.
11. The veracity and correctness of such case has to be tested in a full-fledged trial and it would be premature to decide such question conclusively at the present juncture.
12. In any event, the said issue is a non-issue insofar as the injunction is concerned, in view of the existence of a written agreement between the parties.
13. The primary consideration of the learned trial Judge for dismissing the injunction application was that the balance

consideration was not paid by the appellant within three months as agreed in the agreement.

- 14.** However, we find from the relevant clause in the said agreement that there was no mandatory provision in the said agreement that the balance consideration has to be paid within the said period of three months to indicate that time was the essence of the contract.
- 15.** Rather, the defendant/respondent stated in the agreement that the defendant would execute a registered deed of sale in favour of the plaintiff/appellant in the event the balance consideration was paid within three months and in the event the defendant failed to do so, the plaintiff would be at liberty to have the deed executed through court.
- 16.** However, any contrary rider is absent in the agreement.
- 17.** There is no sanction in the agreement for terminating the agreement in the event the consideration amount was not paid within the period of three months.
- 18.** It is nowhere stated in the agreement that if such payment was not made within the stipulated period of three months, the agreement would stand cancelled or would lose its force.
- 19.** Such aspect of the matter was entirely overlooked by the learned trial Judge, just as it glossed over the documents produced by the plaintiff by way of correspondence indicating that soon after

the period of three months was over, the plaintiff wrote to the defendant offering to pay up the entire balance consideration and iterating that such offers was made several times even previously.

- 20.** Moreover, the defendant, much subsequent to the period of three months, purported to cancel the agreement.
- 21.** Also, as argued by the plaintiff/appellant, the earnest money of Rs.5 lakh, which was admittedly paid simultaneously with the execution agreement by the plaintiff to the defendant, was not returned by the defendant within the stipulated period of three months or immediately thereafter.
- 22.** Such factual aspects of the matter raise a sufficiently strong *prima facie* case for grant of injunction and as such, we are of the opinion that the learned trial Judge erred in law and in fact in dismissing the temporary injunction application of the plaintiff.
- 23.** We make it clear that we would have otherwise allowed the said temporary injunction application by setting aside the impugned order and grant the injunction to the plaintiff/appellant as prayed for in the suit, unless it was pointed out to us that the property has been transferred to a stranger, who is not a party either to the suit or the present appeal, in the meantime.

- 24.** As such, any order of injunction passed against the defendant would be toothless *ab initio* since no useful purpose would be served in injuncting the defendant, who has already effected a transfer in respect of the suit property.
- 25.** Accordingly, although for entirely different reasons, we are loathe to interfere with the impugned order.
- 26.** FMA 1146 of 2024 is, accordingly, disposed of by holding that the impugned order is otherwise illegal and erroneous in law and in fact but stopping short of setting aside the same only in view of the transfer having been effected in respect of the suit property in the interregnum by the defendant in favour of a third party.
- 27.** However, the plaintiff/appellant will be at liberty to seek self-same injunction in respect of the third party to whom the property has been transferred by the defendant in the meantime, by impleading the said third party as a party to the suit.
- 28.** The name and particulars of the said transferee shall be disclosed in writing to the learned Advocate-on-record for the plaintiff/appellant in this court by the learned Advocate-on-record for the defendant/respondent by June 26, 2025, to enable the plaintiff to implead the said third party as a defendant in the suit and to renew his prayer for injunction against the said added party.

29. CAN 1 of 2024 is also disposed of in the light of the above observations.

30. There will be no order as to costs.

(Sabyasachi Bhattacharyya, J.)

I agree.

(Uday Kumar, J.)

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