

35 **18.09.
2025**

Ct. No. 06

Ab

CO 3509 of 2025

**Pratap Ballav
Vs.
Nirmal Chandra Dey.**

Mr. Tarak Nath Halder.

... for the petitioner.

1. This application under Article 227 of the Constitution of India is at the instance of the decree-holder and is directed against an order dated 30th July 2025 passed by the learned Civil Judge (Junior Division), Additional Court at Sealdah, District – North 24-Parganas in Miscellaneous Case No. 72 of 2023 arising out Ejectment Suit No. 2 of 2019.
2. By the order impugned, the learned trial Judge rejected the application filed by the petitioner praying for recalling the order dated 12th June 2024 by virtue of which the temporary injunction application in Miscellaneous Case No. 72 of 2023 stood rejected.
3. The petitioner filed a suit for eviction being Ejectment Suit No. 2 of 2029. The said suit was decreed ex parte by a judgment and decree dated January 21, 2022. The petitioner obtained possession of the decreetal property by executing the said decree with police assistance. Thereafter, the opposite party filed an application under Order IX Rule 13 of the Code of Civil Procedure, which was registered as Miscellaneous Case No. 72 of 2023. The petitioner did not appear in the said Misc. Case for which the Miscellaneous Case was fixed for ex parte hearing. Subsequently, the petitioner appeared in the said Misc. Case and filed an application praying for setting aside the order of ex parte

hearing upon payment of costs.

4. In the meantime, the opposite party filed an application under Order XXXIX Rule 1 and 2 of the Code praying for an order of injunction restraining the petitioner and his men and agent from demolishing the existing structure of the suit property and/or from changing the nature and character of the same till the disposal of the Misc. Case.
5. Learned Judge passed an ad interim order of injunction on 15th September 2023 thereby restraining the petitioner herein from demolishing the existing structure over the schedule property in any manner that may change the nature and character of the suit property till 7th October 2023. The said application for temporary injunction was fixed for ex parte hearing on 12th June 2024 and the learned Judge passed an order restraining the petitioner from demolishing the existing structure over the suit schedule property in any manner that change the nature and character of the said property till the disposal of the Misc. Case.
6. Since the application for injunction was allowed ex parte, the petitioner being over enthusiastic after having been permitted to contest the Misc. Case filed an application praying for recalling of the order of injunction and to allow the petitioner to contest the said application. Such application stood rejected by the impugned order.
7. Mr. Halder, learned Advocate for the petitioner submits that since the petitioner assigned good cause for his previous non-appearance in the Misc. Case and the learned Judge upon being satisfied that the cause shown by the petitioner had set aside

the order of ex parte hearing, the learned Judge ought to have allowed the application for recalling the order of temporary injunction.

8. On a query of the Court, Mr. Halder submits that the property has not yet been demolished and the same is still in existence as it was at the time of passing of the ex parte decree and taking over possession of the same by executing the said decree. The application for temporary injunction was fixed for ex parte hearing since the petitioner for the reasons best known to him, did not contest the same.
9. However, the fact remains that the property, which forms the subject matter of the dispute between the parties, should not be allowed to be changed during pendency of the proceeding. The learned Judge passed an order of injunction restraining the petitioner from changing the nature and character of the suit property and/or from demolishing the same.
10. After hearing the learned Advocate for the petitioner it appears to this Court that the purpose behind filing the application for recalling is to frustrate the Misc. Case as the petitioner seeks to recall the order by virtue of which the nature and character was allowed to be maintained in its present estate.
11. The learned Judge assigned the cogent reasons for rejecting the application for recalling. The said order does not suffer from any infirmity warranting interference under Article 227 of the Constitution of India.
12. With the above observations, CO 3509 of 2025 stands dismissed without, however, any order as to costs.

13. Urgent Photostat copy of this order, if applied for, be given to the parties on priority basis.

(Hiranmay Bhattacharyya, J.)