

25.07.2025
16
Ct.No.7
as

CO 3512 of 2024

**M/s. A.P.J. Group, a partnership firm,
represented by its partners, viz.,
Sri Ashok Kumar Mondal & Ors.
Vs.
Sri Kanika Das Burman @
Kanika Das & Ors.**

Mr. Tanmoy Mukherjee,
Mr. Sounak Bhattacharya,
Mr. Sounak Mondal,
Mr. Rudranil Das,
Mr. Anirban Saha Roy.
.....for the petitioners

Mr. Sukanta Chakraborty,
Mr. Anindya Halder.
..... for the Opp. Party No.1.

1. The present application has been filed by the defendants/appellants/petitioners (hereinafter referred to as "the petitioners") under Article 227 of the Constitution of India, challenging the legality and propriety of the order dated 3rd September, 2025, passed by the learned Additional District Judge, Fast Track Court, Serampore, Hooghly, in Misc. Appeal No. 52 of 2024. By the said order, the learned appellate court refused to entertain the petitioners' prayer for an ex parte stay of the interim order dated 23.07.2024 passed by the learned Civil Judge (Junior Division), 1st Court, in Title Suit No. 564 of 2023. The said interim order directed the parties to maintain status quo with respect to the nature, character, and possession of the suit property until the disposal of the suit.

2. Succinctly stated, the facts leading to the filing of this revisional application are that the plaintiff, Smt. Kanika Das Burman @ Kanika Das, instituted a suit for declaration and other consequential reliefs before the Court of the Civil Judge (Junior Division), 1st Court, Serampore, Hooghly, which was registered as Title Suit No. 564 of 2023. In the plaint, it has been, inter alia, alleged that the defendants undertook the construction of a multi-storied building on the land adjoining the plaintiff's property in brazen violation of the applicable Building Rules and in clear deviation from the building plan sanctioned by the Municipality.

3. Along with the plaint, the plaintiff filed an application under Order XXXIX Rules 1 and 2 read with Section 151 of the Code of Civil Procedure, seeking an interim order. The said application was disposed of by the learned Trial Court upon contested hearing, by an order dated 23.07.2024. As noted earlier, by the said interim order, the learned Trial Court directed the parties to the suit to maintain status quo with respect to the nature, character, and possession of the suit property as it existed on that date, until the disposal of the suit.

4. The defendant Nos. 1, 2, and 3(c) preferred Misc. Appeal No. 52 of 2024, challenging the interim order passed by the learned Trial Court. Along with the memorandum of appeal, the appellants also filed an application seeking an ad-interim order of stay of the said interim order. However, as noted earlier, the learned Appellate Court declined to grant the prayer for ex parte ad-interim stay of the interim

order passed by the Trial Court. Aggrieved by the order of the Appellate Court dated 3rd September, 2024, the present revisional application has been filed.

5. Mr. Bhattacharya, learned Advocate appearing on behalf of the petitioners, submits that while considering a prayer for ad-interim injunction, the Court, in addition to other established factors, ought also to examine the maintainability of the suit. In support of this contention, he draws the Court's attention to the prayer portion of the plaint as well as to certain specific paragraphs therein, and submits that the suit is, in essence, directed against the alleged action and/or inaction of the Municipal Authority.

6. Inviting my attention to the provisions of Section 407 of the West Bengal Municipal Act, 1993 (hereinafter referred to as "the 1993 Act"), Mr. Bhattacharya submits that no suit can be instituted against a Municipality without serving a written notice upon the Municipal authority at least one month prior to the institution of such suit. He contends that in the present case, no such notice, either under Section 407 of the 1993 Act or under Section 80 of the Code of Civil Procedure, 1908 (for short, CPC), has been served upon the concerned Municipal authority. According to Mr. Bhattacharya, the failure to comply with this mandatory requirement renders the suit not maintainable in law.

7. He submits that the learned Trial Court failed to take cognizance of the plaintiff's omission to serve the mandatory notice upon the Municipality, and proceeded to pass the interim order in a mechanical manner. It is further

contended that the learned Appellate Court also overlooked this vital issue. Mr. Bhattacharya argues that the interim order passed by the learned Trial Court has the potential to cause irreparable loss and prejudice to the petitioners, and in fact, has already resulted in serious consequences for them. In such circumstances, the learned Appellate Court ought to have stayed the operation of the said interim order.

8. Mr. Chakraborty, learned Advocate appearing on behalf of the plaintiff/opposite party no. 1, submits that the application under Order XXXIX Rules 1 and 2 of the Code of Civil Procedure was disposed of on contest, after hearing the representatives of the defendants as well as the Municipal authorities. He draws the Court's attention to the written objection filed by the defendants/petitioners herein, and contends that the issue of maintainability on the ground of non-service of notice upon the Municipality was never raised by the defendants at any stage, either before the learned Trial Court or before the learned Appellate Court.

9. He submits that in the present suit, the plaintiff has prayed for a decree of declaration against the defendants as private individuals, and that the suit, in substance, is not directed against the Municipality. He further contends that the provisions of Section 407 of the West Bengal Municipal Act, 1993 do not oust the jurisdiction of the Civil Court to entertain a suit for declaration or to pass a decree thereof, as there is no express provision to that effect in the statute.

10. Mr. Chakraborty submits that the Municipality has found merit in the plaintiff's contentions and has concluded

that the construction in question was carried out in blatant violation of the applicable building rules and in deviation from the sanctioned building plan. Accordingly, Mr. Chakraborty submits that the Municipality has issued an appropriate notice to the defendants.

11. He asserts that an application for ad-interim injunction seeking to stay the operation of an interim order passed by a learned Trial Court after a contested hearing is not maintainable. He draws my attention to the application filed by the defendants/applicants herein under Order 41 Rule 5 of the Code of Civil Procedure and contends that the said application fails to disclose any grounds justifying the grant of the ex parte ad-interim stay of the interim order as prayed for.

12. In reply, Mr. Bhattacharya draws my attention to the prayer portion and certain paragraphs of the plaint, arguing that the plaintiff has sought a decree of declaration on the ground of alleged inaction by the Municipal authority in taking appropriate measures regarding the construction of the building. Additionally, he submits that the plaintiff has prayed for the cancellation of the sanctioned building plan. Therefore, he contends that it cannot be said that the suit has been instituted solely against certain private individuals.

13. Heard the learned Advocates appearing for the respective parties and perused the materials on record.

14. Undoubtedly, the interim order was passed by the learned Trial Court on contest and after affording an opportunity of hearing to all parties, including the Municipal

authority. The Municipal authority did not raise any objection or claim that it had suffered prejudice or failed to prepare itself to defend the suit effectively on the ground that no notice had been served upon it prior to the institution of the suit, whether under Section 407 of the West Bengal Municipal Act, 1993, or Section 80 of the Code of Civil Procedure.

15. In common parlance and understanding, it may be stated that if such notice is not served, it is the Municipality that stands to suffer the most, as it would be deprived of a sufficient opportunity to prepare an effective defense in the proceeding.

16. In the present case, it prima facie appears that the suit was instituted against private individuals and not against the Municipality, although the plaint contains allegations of inaction on the part of the Municipal authority in addressing the issue and in taking appropriate action against the alleged illegal construction, despite having been approached in that regard. Furthermore, the interim relief was specifically sought against the private individuals.

17. Needless to state, while deciding an application for an interim order, the Court is required to consider the three well-established factors: (i) whether the applicants have made out a strong prima facie case in their favour, (ii) whether the balance of convenience lies in their favour, and (iii) whether they are likely to suffer irreparable loss and prejudice if the prayer for interim relief is not granted.

Undoubtedly, the Court shall also consider whether suit is maintainable.

18. To determine whether the applicants have made out a prima facie case, the Court primarily examines whether they have raised a substantial question warranting adjudication at trial. In considering the other two factors, namely balance of convenience and irreparable injury, the Court must assess whether, in the event the plaintiff's prayer for interim relief is refused but he ultimately succeeds at trial, he can be adequately compensated. Similarly, if interim relief is granted but the defendants ultimately succeed in appeal, the Court must examine whether the injury suffered by the defendants due to the interim order can be adequately remedied through compensation.

19. In the present case, upon consideration of the facts and circumstances, it prima facie appears that if the defendants are permitted to alter the nature and character of the suit property, and the plaintiffs subsequently succeed in the appeal, such alteration may lead to further complications and multiplicity of proceedings. This, in turn, may result in irreparable loss to the plaintiffs. In a case where it has been alleged that the construction of a multi-storied building is being carried out in gross violation of the Building Rules and in deviation from the sanctioned building plan, it would not be appropriate to allow further construction to continue, particularly when the Municipality has not categorically refuted the plaintiff's contentions.

20. Needless to observe, the primary object of granting a temporary injunction is to preserve the suit property in the same condition as it existed at the time of institution of the suit, until the rights and liabilities of the parties are finally adjudicated by the Court. In my view, such an interim order, directing the parties to preserve the suit property, ought not to have been interfered with by the learned Appellate Court, particularly in light of the facts and circumstances of the present case.

21. Therefore, I am of the considered view that the learned Appellate Court did not commit any error or misdirect itself in refusing the prayer for an ad-interim stay of the injunction granted by the learned Trial Court.

22. Accordingly, the revisional application is dismissed, however, without any order as to costs.

23. The learned Appellate Court is directed to dispose of the appeal as expeditiously as possible, preferably within six months from the date of receipt of a copy of this order, without granting unnecessary adjournments to either party.

24. It is imperative to clarify that the observations made in this order are solely for the purpose of disposing of the present application. The learned Appellate Court shall dispose of the appeal independently and shall not be influenced by any observations made herein.

(Partha Sarathi Chatterjee, J.)