

Item No.3
21.11.2025
Court. No. 6
GB/CP

C.O. 3882 of 2025

Sri Bapi Jana
Vs.
Sekh Yeasin

*Mr. Uddipan Banerjee,
Mr. Subhrakanti Samanta*

...for the Petitioner.

1. The revisional application arises out of an order dated February 27, 2025, passed by the learned District Judge at Howrah in Misc. appeal No.105 of 2024. The misc. appeal arose out of an order passed by the learned Civil Judge (Junior Division), 4th Court at Howrah in Title Suit No.451 of 2024. Initially, ad interim order was granted. Thereafter, the same was vacated by the Trial Judge. The Misc. Appeal was preferred.
2. The petitioner submits that the petitioner had purchased the property from one Habiba Yesmin. Habiba Yesmin sold her undivided share in respect of the shop room in favour of the petitioner. The petitioner was running the said shop room. The petitioner has document of possession. Despite such factual assertion, the learned Trial Judge vacated the order of ad interim injunction. Such order was passed upon hearing the defendants and upon consideration of their application under Order 39 Rule 4 of the Code of Civil Procedure. It is submitted that, when the petitioner had filed necessary documents to show that

he was in possession, the question of vacating the ad interim order that was passed, did not arise. At least the plaintiff/petitioner should have been favoured with an order of status quo.

3. It appears that the ad interim order of injunction was passed by the learned trial judge on April 3, 2024, restraining the defendant and his men and agent from grabbing the suit property and from creating any disturbance in the peaceful running of the business of the plaintiff from the suit property. However, the said application was made subject to the condition that, if, it was found that the plaintiff had misguided the court and misled the court into passing the order, the plaintiff would be liable to pay a cost of Rs.4,000/- to the defendant and Rs.4,000/- to the other family members, totalling to Rs.8,000/-.
4. The defendant filed an application under Order 39 Rule 4 of the Code of Civil Procedure, praying for vacating of the ad interim order of injunction. The defendant contended that the defendant was a co-owner of the property along with his four brothers. The said property was jointly owned by the brothers. The property was purchased sometime in 1995. The names of the five brothers, including the defendant, was recorded in the land records. Upon conversion of the land, 14 shop rooms were constructed. Out of 14 shop rooms, five shops were given away for rehabilitation of the tenants who were in occupation of the said

property. Rest of the nine shop rooms were treated to be under a joint and undivided possession. The brothers jointly sold two shops to outsiders and seven shops remained as part of the joint ownership and possession. The eldest brother, Sk. Salim had decided to gift his property unconditionally to one Habiba Yesmin, being the wife of Sk. Noor Rahaman, who was also a family member. The defendant did not have any access to the said deed of gift. Habiba Yesmin did not claim any adverse right to the brothers. When the plaintiff tried to claim possession of the property and barged into the property, a suit was filed against the plaintiff.

5. The suit was filed for declaration, and the deed of gift executed between Sk. Salim and Habiba was also under challenge in the said suit. It was categorically contended that the plaintiff did not have possession of the property, but the plaintiff with an oblique motive and mala fide intention was trying to harass the defendants by forcefully entering into the property.
6. In the said suit, an order of injunction was also passed against the plaintiff which was still subsisting. On such ground, the defendant prayed that the interim order be vacated.
7. The learned trial judge, upon considering the materials, held that the plaintiff had obtained the ad interim order by suppressing the fact that a competent civil court had already enjoined the plaintiff from

disturbing the defendant. The said order was subsisting. The plaintiff had suppressed material facts. Under such circumstances, the ad interim injunction was vacated by the learned trial judge and the application for injunction was kept for hearing.

8. Aggrieved by the said order allowing the application of the defendants under Order 39 Rule 4 of the Code of Civil Procedure, the petitioner filed the Misc. Appeal. The appellate court upon considering the facts and upon specifically holding that, the plaintiff approached the court with unclear hands and he was not entitled to an ad interim order.
9. In my view, the courts have not committed any illegality in passing the orders impugned before me. When the plaintiff has already suffered an order of injunction in a suit filed by the defendant, which is a prior suit, and when the order of ad interim injunction is subsisting in the said proceeding, the question of grant of a further ad interim injunction to the plaintiff in a subsequent, suit did not arise. The plaintiff did not take any steps in the other suit, for vacation of order of injunction.
10. Under such circumstances, this revisional application is dismissed.
11. However, the learned trial court, while hearing the injunction application, should not be influenced by the observations made hereinabove, but should decide the matter independently.

12. There shall be no order as to costs.

13. Parties are to act on the server copy of this order.

(Shampa Sarkar, J.)