

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 Supratim Bhattacharya

F.M.A. 1867 of 2025
IA No: CAN 1 of 2025

Kashi Prasad Jhajharia HUF

Vs.

Sarawogi & Sandeep Builders and Developers LLP and others

For the appellant	:	Mr. Somnath Roy Chowdhury Ms. Arpita Chowdhury
For the respondents/Caveators	:	Mr. Saptanshu Basu Mr. Mahendra Prasad Gupta Ms. Moumita Dhar
Heard on	:	23.12.2025
Judgment on	:	23.12.2025

Sabyasachi Bhattacharyya, J.:-

1. The affidavit-of-service filed in court today be kept on record.
2. The present challenge has been preferred against an order whereby an application under Order XXXIX Rule 4 of the Code of Civil Procedure filed by the respondents has been allowed by the learned Trial Judge, thereby vacating an *ad interim* order of

status quo obtained by the plaintiff/appellant in a declaratory suit.

3. The suit filed by the plaintiff/appellant is primarily for declaration of the plaintiff's 1/6th share in the suit property as well as for declaration challenging transfer deeds executed by the defendants/respondents *inter se*.
4. In such suit, on temporary and *ad interim* injunction being sought by the plaintiff/appellant, the learned Trial Judge initially granted status quo as regards possession as well as changing the nature and character of the suit property.
5. Subsequently, the respondents filed an application under Order XXXIX Rule 4 of the Code, thereby pointing out that there is a subsisting order passed by the Kolkata Municipal Corporation under Section 412A of the Kolkata Municipal Corporation Act, 1980, directing submission of necessary documents as asked by the building department to process plan proposal under Section 412A of the KMC Act, 1980 as well as the KMC Building Rules, 2009 as expeditiously as possible. The premise of such order is that the suit building is in a dilapidated and precarious condition and may crumble down any day.
6. The construction work, as per the said order dated February 2, 2022 is also to be completed within the stipulated period as per plan, to be sanctioned by the KMC.

7. Learned senior counsel appearing for the respondents contends that unless construction is made and the building is renovated/reconstructed, there would be utter non-compliance of the notice of the KMC, which has not been challenged before any forum by any of the parties.
8. Secondly, it is contended by learned senior counsel that there is serious risk to life and limb of the residents of the house as well as the persons in the vicinity unless the order of the KMC is carried out immediately.
9. Thus, on such valid ground only, the *ad interim* order granted was vacated, particularly since such order of the KMC was suppressed in the injunction application and the plaint.
10. After carefully considering the submissions of the parties, we find annexed to the present papers an order of the Kolkata Municipal Corporation dated February 2, 2022 where the KMC has also cited a previous notice under Section 411(2) of the KMC Act, 1980, which provides that the Municipal Commissioner may, if it appears to him necessary so to do, cause a proper hoarding or other means of protection to be put up at the expense of the owner at the site.
11. Section 412A, in Clause (iii) thereof, provides that simultaneously with the making of a declaration under Clause (ii), the KMC will serve a notice upon the owner or owners, as

the case may be, and paste it on the outdoor of the building providing an option to the owner or owners, as the case may be, of the building to *reconstruct the building according to the plan to be sanctioned by the Corporation* with such expedition as possible.

- 12.** Thus, this court is convinced that before obtaining an order of *ad interim* injunction, the said fact was necessarily to be disclosed to the learned Trial Judge.
- 13.** Moreover, not only was suppression of such fact a material consideration in the application under Order XXXIX Rule 4 of the Code, the undue hardship to be suffered by the parties but also the people residing at the premises, including tenants, and the neighbouring persons and passers-by, who would be at substantial risk unless the order of the Corporation is not carried out, cannot also be ruled out.
- 14.** Hence, the impugned order vacating the *ad interim* order of status quo was justified on the grounds of both suppression of material facts and undue hardship, which are germane considerations under Order XXXIX Rule 4 of the Code of Civil Procedure.
- 15.** Thus, we do not find any justification or reason to interfere with the impugned order vacating the *ad interim* order obtained by the plaintiff/appellant.

- 16.** However, we hasten to add that the appellant as well as the respondents are permitted to jointly apply for sanction plan in terms of the order dated February 2, 2022 under Section 412A of the KMC Act within a fortnight from date.
- 17.** Upon such application being made, the KMC shall expeditiously process the same in accordance with law in order for the parties to make joint construction in terms of the order of the KMC and as per the approved sanction plan.
- 18.** In the event the parties do not or cannot come to a consensus and file a joint application for such sanction plan, immediately upon the expiry of a fortnight from date, the respondents, by themselves, will be at liberty to file such application for making construction in terms of the KMC order.
- 19.** In such event as well, the KMC shall duly process the same as expeditiously as possible.
- 20.** We make it abundantly clear that since the respondents substantially concede to the plaintiff/appellant having 1/6th share in the building, we do not enter into the merits of the contentions of the parties and nothing in this order shall operate adversely against either of the parties inasmuch as the final hearing of the suit is concerned.
- 21.** None of the parties shall be entitled to claim any special equity or rights merely by virtue of making of such construction

inasmuch as the joint rights of the parties to the suit property is concerned.

- 22.** Accordingly, FMA 1867 of 2025 is dismissed on contest, thereby affirming the impugned order, bearing Order No.15 dated November 12, 2025 passed by the learned Judge, Twelfth Bench, City Civil Court at Calcutta in Title Suit No.499 of 2025.
- 23.** Consequentially, CAN 1 of 2025 stands disposed of as well.
- 24.** There will be no order as to costs.
- 25.** Urgent photostat copies of this order, if applied for, be given to the parties upon compliance of all requisite formalities.

(Sabyasachi Bhattacharyya, J.)

I agree.

(Supratim Bhattacharya, J.)

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