

Court No. 6  
(265719)

**01.09.2025**  
(A 30)  
(S. Banerjee)

CO 4291 of 2024

Indrajit Roy  
Vs.  
Tapan Kumar Dutta & Ors.

Mr. Debjit Mukherjee  
Mr. Kaustav Bhattacharjee  
Ms. Priyanka Jana

... for the petitioner

This application under Article 227 of the Constitution of India is at the instance of the defendant no. 5(a) and is directed against the judgment and order dated August 29, 2024 passed by the learned Additional District Judge, 3<sup>rd</sup> Court at Alipore in Misc. Appeal No. 176 of 2016. By the judgment and order impugned, the learned judge of the appellate court reversed the order passed by the learned trial judge on April 22, 2016 and passed an order of injunction restraining the respondent in the misc. appeal from selling, transferring, alienating and/or encumbering the suit roof in any way and further restraining the respondents in the said misc. appeal from creating any obstruction to the plaintiffs/opposite parties herein to the free ingress and egress to the suit roof till disposal of the temporary injunction application.

Mr. Mukherjee, learned advocate appearing for the petitioner submits that the plaintiff/opposite party herein filed a suit praying for declaration that they are the absolute owners of the suit roof and for permanent injunction restraining the petitioner and the other proforma opposite parties herein from creating any obstruction to the plaintiffs' free ingress and egress to the suit roof. He submits that the interim order passed by the learned judge of the appellate court in the misc. appeal would amount to allowing the final relief claimed in the suit. He further submits that the learned trial judge after considering the materials on record refused to pass an ad interim order of injunction and the learned judge of the appellate court without considering the reasons assigned by the learned trial judge allowed the prayer for injunction.

The learned trial judge after considering the materials on record observed that the defendants also have right over the suit roof. Thus it appears that the learned trial judge was also prima facie satisfied that the plaintiffs/opposite parties have a right over the suit roof. The learned judge of the appellate court after considering the materials on record, including the reliefs claimed in the plaint, observed that even if it is accepted that the relief with regard to the exclusive ownership of the suit roof cannot be granted

in favour of the respondents at this stage, there is no impediment to grant an ad interim injunction. The learned judge of the appellate court passed an order of injunction restraining the petitioners and the proforma opposite parties from selling, transferring alienating and/or encumbering the suit roof in any way. The learned judge of the appellate court further restrained the petitioner and the proforma opposite parties from creating any obstruction to the plaintiffs/opposite parties herein to the free ingress and egress to the suit roof till the disposal of the temporary injunction application. Even if the plaintiffs do not have exclusive right over the suit roof, their right to the common user of the suit roof, cannot be denied by the petitioners and the proforma opposite parties herein. Thus, the plaintiffs/opposite parties cannot be obstructed from using the suit roof. That apart, unless an order of injunction restraining the petitioner and the proforma opposite parties from creating third-party interest is passed, there will be multiplicity of proceeding. This court is, therefore, of the view that the learned judge of the appellate court was right in passing an order of injunction till the disposal of the temporary injunction application.

At this stage Mr. Mukherjee, learned advocate appearing for the petitioner submits that the

application for temporary injunction is otherwise ready for hearing.

In the light of the submission made by Mr. Mukherjee, learned advocate appearing for the petitioner, CO 4291 of 2024 stands disposed of by requesting the learned Civil Judge (Jr. Division) 3<sup>rd</sup> Court at Alipore to take up the hearing of the application under Order 39 Rule 1 and 2 of the Civil Procedure Code on the next date fixed, if the same is otherwise ready for hearing and to make an endeavour to dispose of the same as expeditiously as possible without granting any unnecessary adjournment to either of the parties.

It goes without saying that the consideration for passing an order of temporary injunction is different from that of an ad interim order of injunction and the learned trial judge shall decide the application for temporary injunction independently without being swayed by the observations contained in the order passed by the learned Additional District Judge, 1<sup>st</sup> Court at Alipore in Misc. Appeal No. 176 of 2016, and this court in this order.

**(Hiranmay Bhattacharyya, J.)**