

Court No. 1  
(266111)

**13.01.2025**

(AD 23)

(RP/S. Banerjee)

MAT 2317 of 2024

CAN 1 of 2024

Md. Shahnawaz

Vs.

State of West Bengal & Ors.

Mr. Samim Ahammed

Mr. Arka Maity

Ms. Ambiya Khatun

Mr. Danish Abbasi

Mr. Enamul Islam

...for the petitioner

Mr. Amitesh Banerjee, Sr. Advocate

Mr. Akash Dutta

...for the State

Mr. Saptangshu Basu

Ms. Sumita Shaw

Ms. Shaila Afrin

Mr. Soumen Chatterjee

...for the respondent nos. 2 to 5

1. This intra-court appeal is directed against the order dated 17.12.2024 passed in WPA 29400 of 2024. By a common order, both the writ petitions were disposed of with certain observations and clarifications were made. The operative portion of the order reads as follows:

*“ So far as WPA 29159 of 2024 is concerned, I find that earlier in T.S. No. 1866 of 2024, the learned Judge, bench-IX, City Civil Court, Calcutta has passed directions on*

*02.12.2024 that the petitioner/Md. Shahnawaz is granted liberty to file an appropriate application before the said Court.*

*The learned Court, if it deems fit and proper, would accordingly issue directions for police assistance and/or police protection for implementation of its own order after assessing the violations, if any.*

*Since the order dated 09.12.24 is recalled, the police authorities would ensure that the original status of the parties as it was reflected in the report submitted before this court on 09.12.2024 should be restored.*

*Accordingly, I direct that the learned Judge, Bench-IX, City Civil Court, Calcutta will take endeavour to dispose of any application filed on behalf of the petitioner/Md. Shahnawaz in the suit which is pending before him preferably on 23<sup>rd</sup> of December, 2024, when the date is already fixed before the said Court.*

*The parties would be at liberty to canvass all the issues in T.S. No. 1998 of 2024 before the learned Judge, Bench-IX, City Civil Court, Calcutta.*

*With the aforesaid observations, WPA 29400 of 2024 along with WPA 29159 of 2024 & CAN 1 of 2024 is disposed of.*

*Learned advocate for the State is directed to hand over all the reports which have been filed in both the writ petitions to Mr. Ahamed, learned advocate appearing on behalf of the petitioner in WPA 29159 of 2024.*

*Liberty is granted to the petitioner in WPA 29159 of 2024 to canvass all the issues by way of filing an application.”*

2. The impugned order was passed on 17<sup>th</sup> December, 2024. It is not in dispute that the appellant/writ petitioner had filed a suit being T. S. No. 1998 of 2024 before the learned Judge, Bench No. IX, City Civil Court at Calcutta in which the interim order was initially granted and thereafter an application came up for extension of the interim order and the City Civil Court has passed an order on 23.12.2024 which is to the following effect:

*“ Heard the respective Learned Advocate for the parties.*

*Perused the injunction application with enclosures and the written objection of the defendant nos. 2-5 with annexures. Considered.*

*The Learned Advocate for the defendant nos. 2-5 submits that the plaintiff with collusion of the defendant nos. 1 has filed the suit. The plaintiff was using the defendant nos. 2-5's property for godown purpose. After passing of the order of the Hon'ble High Court, the police authority had put up a padlock on the entrance of the door of their property being premises no. 16/1A and 16/1B Komedan Bagan Lane. The defendant no. 1 without knowledge and consent of the other defendants inducted the plaintiff. The plaintiff has filed the suit to grab the property of the defendant nos. 2-5 by wrongly mentioning the premises no. 43/1, Abdul Halim Street which has been wrongly and illegally amalgamated. The said defendants pray for vacating the ad interim order of injunction and reject the injunction application.*

*The defendant no. 1 submits that the order of amalgamation though under challenge has not been set aside. The defendant no.*

*I did not attempt to dispossess the plaintiff.*

*The Learned Advocate for the plaintiff submits that possession of the plaintiff be protected till disposal of the suit. The plaintiff has been inducted by one co-owner is competent to let out the property.*

*The object of temporary injunction is to maintain status quo pending adjudication of the rights of the parties in evidence on trial. So whether the plaintiff occupied the defendant nos. 2-5's property or not cannot be adjudicated at this stage on the materials on record.*

*The plaintiff has submitted the copy of tenancy agreement, the copy of rent receipts in respect of the suit premises and the copy of electricity bill together showing prima facie case.*

*The defendant nos. 2-5 have annexed copy of deed of sale in respect of premises no. 16/1A, and 16/1B, Komedan Bagan Lane. The said defendants have also filed one site plan in respect of 16, Komedan Bagan Lane showing that the suit property is different from the property*

*claimed by the defendant nos. 2-5.*

*In the instant case the plaintiff does not assert any right of tenancy in respect of either 16/1A or 16/1B, Komedan Bagan Lane. So if injunction is granted in respect of suit premises, the property of the defendant nos. 2-5 i.e., 16/1A or 16/1B will not be any way affected. So the balance of convenience and inconvenience is in favour of the plaintiff.*

*Injury to immovable property causes irreparable loss.*

*Hence it is*

*O r d e r e d*

*that the application for temporary injunction is allowed on contest without cost.*

*The defendants are hereby restrained from dispossessing the plaintiff from the suit property till disposal of the suit. ”*

3. Mr. Shamim, learned advocate appearing for the appellant would vehemently contend that the writ petitioner was forcibly evicted with the help of the police in the dead of night despite an order of injunction being in force. Since the Civil Court has passed a

subsequent order on 23.12.2024 in which it has been specifically mentioned that the plaintiff who is the appellant in this appeal, does not assert any right of tenancy in respect of either 16/1A and 16/1B, Komedan Bagan Lane, and if injunction is granted in respect of the suit premises, the property of the defendant nos. 2 to 5, i.e., 16/1A and 16/1B, Komedan Bagan Lane, will not be in any way affected. With this reasoning the learned civil Court came to a conclusion that the balance of convenience and inconvenience is in favour of the plaintiff, the appellant herein. The appellant is now armed with the order of injunction and the said order of injunction appears to have attained finality as the defendant nos. 2 to 5 have not challenged the said order. Therefore, it is well open to the appellant to work out his right based on the order passed by the civil Court.

4. Furthermore, we need to point out that when the matter is seized of by the civil Court, it would not augur well for the Court to interdict the process and come to a finding on facts which will directly have an impact on the civil proceedings.

5. There is an allegation that the private respondents forcibly entered into the property at about 2 a.m. with the assistance of police and evicted the appellant. In this regard a complaint has been lodged by the appellant before the Commissioner of Police, Kolkata Police Commissionerate by email dated 6<sup>th</sup> December, 2024.
6. Mr. Amitesh Banerjee, learned Senior Advocate for the State, submits that the allegations made by the appellant that the police also aided the private respondents to evict the appellant, is denied.
7. If the said complaint has not been enquired into, it will be well open to the Commissioner of Police to direct an enquiry to be done and necessary action be taken in accordance with law, after notice to all concerned.
8. With the aforesaid observation and direction, the appeal is dismissed.

**(T. S. Sivagnanam, C. J.)**

**(Hiranmay Bhattacharyya, J.)**