

Court No. 6
(265719)

11.09.2025
(A 171)
(S. Banerjee)

CO 4512 of 2024

Smt. Shilpi Ray & Anr.
Vs.
Sri Subrata Ghosh

Ms. Shohini Chakrabarty
Mr. Arijit Sarkar
Ms. Prajaaini Das

...for the petitioners

Mr. Shibaji Kumar Das
Mr. Aniket Kanrar

...for the opposite party

Affidavit of service filed in Court today, is taken
on record.

This application under Article 227 of the
Constitution of India is at the instance of the
defendant and is directed against order no. 14 dated
November 13, 2024 passed by the learned Civil Judge
(Jr. Division), 1st Court at Durgapur, Paschim
Burdwan. By the order impugned, the application
under Section 151 of the Civil Procedure Code
praying for police help for implementation of the ad
interim order of injunction by directing the petitioners
to remove the padlock from the main door of the
garage in the ground floor and the main door of the
roof entrance was allowed.

Learned advocate appearing for the petitioners submits that the opposite party claims to be a tenant under the co-owners of the petitioners. He submits that the petitioners have not inducted the opposite parties as tenant in respect of the suit property. He further submits that the court should be very slow to implement an ad interim order of injunction through police help.

Mr. Das, learned advocate appearing for the opposite party submits that the opposite party was inducted as a tenant in respect of the suit premises which comprises of two bedrooms, bath and kitchen along with free access of the roof of the building with a four wheeler garage in the ground floor of the building along with proportionate service facilities of electricity through separate meter, water supply and drainage service. He further submits that the learned trial judge after being satisfied with the prima facie case made out by the opposite party passed an ad interim order of injunction restraining the petitioners from disturbing the peaceful possession of the opposite party in respect of the suit property.

Heard the learned advocates for the respective parties and perused the materials placed.

The petitioners filed a written objection to the application under Section 151 of the Civil Procedure

Code. In the said written objection it was specifically stated that the petitioners do not have any right of user of the roof or the garage which was taken on monthly tenancy by the plaintiff. It was further stated that the roof and the garage were used exclusively by the legal heirs of Alope Nath Ray and Ashok Nath Ray who resided in the said building, and such user by the defendants stands recorded in the report of the learned Advocate Commissioner who inspected the building on June 10, 2024.

The opposite party filed a suit for declaration that he is a lawful tenant in respect of the suit property.

In paragraph 3 of the plaint it has been specifically stated that the opposite party was inducted into the suit property by one Amiya Nath Ray by virtue of a tenancy agreement dated January 5, 2022. Though the opposite party has prayed for declaration of tenancy right but the inducting landlord has not been impleaded as a party defendant in the said suit. The suit for declaration of tenancy right and for permanent injunction has been filed against the co-sharers of the inducting landlord.

In the case on hand the learned trial judge passed an ad interim order of injunction on an application under Order 39 Rule 1 and 2 of the Civil

Procedure Code being filed by the opposite party herein.

It is well-settled that an ad interim order of injunction is passed only on the basis of averments made in the plaint and the injunction application and at the relevant point of time the learned trial judge did not have any occasion to consider the defence case. That apart, the learned trial judge while passing an order of police help, did not consider the case made out by the petitioners in the written objection.

The question that arises for consideration is whether the petitioners or the opposite party was in actual physical possession of the garage on the date of passing the ad interim order of injunction.

The learned trial judge directed removal of the padlock without arriving at a specific finding that the opposite party was in actual physical possession of the garage as on the date of passing the ad interim order of injunction and that the petitioners have put a padlock on the entrance door of the garage in violation of the ad interim order of injunction.

For such reason this court is inclined to interfere with the order impugned. Accordingly, the order impugned stands set aside.

At this stage Mr. Das, learned advocate appearing for the opposite party submits that a direction be passed upon the learned trial judge to dispose of the application for temporary injunction expeditiously.

It has been uniformly submitted by the learned advocates appearing for the respective parties that the injunction application is otherwise ready for hearing.

In the light of the submissions made by the learned advocates for the respective parties, CO 4512 of 2024 stands disposed of by requesting the learned Civil Judge (Jr. Division), 1st Court at Durgapur, Paschim Burdwan to dispose of the application for temporary injunction as expeditiously as possible without granting any unnecessary adjournment to either of the parties.

(Hiranmay Bhattacharyya, J.)