

D/L 46  
03.01.2025  
Court. No. 3  
Aritra

**In the High Court at Calcutta  
Circuit Bench at Jalpaiguri  
Appellate Side**

**C.O. 127 of 2024**

**With**

**CAN 1/2024**

**CAN 2/2024**

**Anand Jain**

**Vs.**

**Jonaku Roy & Ors.**

*Mr. Sibasis Ghosh*

*Mr. Dipankar Deb*

*....for the petitioner*

*Mr. Narendra Nath Das*

*Mr. Madhab Kumar Roy*

*....for the O.P. Nos.1 to 4*

1. The supplementary affidavit as filed on behalf of the opposite party Nos.1 to 4 as filed today is taken on record.
2. In this revisional application the order dated 24/05/2024 as passed in Title Suit No.301 of 2024 by the learned Civil Judge, Junior Division, Jalpaiguri as well as the order No.4 dated 11/07/2024 as passed by the learned District Judge, Jalpaiguri in Misc. Appeal No.40 of 2024 have been impugned.
3. Before the learned Trial Court the plaintiff who is the petitioner before this Court has filed an application under Order 39, Rules 1 and 2 read with Section 151 of the Code of Civil Procedure with a prayer for passing an ad-interim order of injunction restraining the defendants from carrying out any construction work and/or any type of business over the suit plots of land with a further prayer for restraining the defendants from creating any third party

interest in the scheduled mentioned suit properties. By the impugned order dated 24/05/2024 learned Trial Court however declined to pass an ad-interim order of injunction as prayed for in favour of the plaintiff holding that exists no *prima facie* case.

4. Challenging the said order dated 24/05/2024 an appeal was preferred before the learned District Judge and by an order dated 11/07/2024 learned District Judge in Misc. Appeal No.40 of 2024 though admitted the appeal but refused to pass any ad-interim order of injunction. Both the aforementioned two orders refusing to grant ad-interim order of injunction have been assailed before this Court by filing the instant application under Article 227 of the Constitution of India.
5. In support of the petition under consideration learned advocate for the petitioner/plaintiff submits before this Court that both the Trial Court as well as the First Appellate Court have failed to visualise that in the event the injunction as prayed for is not granted the very purpose of filing the suit for eviction against the defendant would become infructuous since taking advantage of the absence of the plaintiff the defendants are making attempt to create third party interest to frustrate the claim of the plaintiff.
6. It is thus submitted that for effective adjudication of the suit for recovery of possession i.e., Title Suit No.301 of 2024 the impugned orders are required to be modified by passing an ad-interim orders of injunction till disposal of the injunction application.

7. Such contention is however opposed on behalf of the opposite parties/defendants. Drawing attention to the affidavit-in-opposition as well as supplementary affidavit as filed today it is argued on behalf of the opposite parties/defendants that the plaintiff have got no right, title and interest over the suit property which would be evident from the documents as have been filed by way of supplementary affidavit. It is further submitted on behalf of the opposite party that on bare perusal of the plaint it would also reveal that the plaintiffs has got no *locus standi* to file the suit.
8. It is thus submitted on behalf of the opposite parties/defendants the learned Trial Court has rightly come to a finding that the plaintiff has miserably failed to establish *prima facie* case for obtaining an ad-interim order of injunction and therefore, no interference is called for in respect of the orders which have been impugned in the instant revisional application.
9. On perusal of the entire materials as placed before this Court and after hearing the arguments of the learned advocates for the contending parties it appears to this Court that admittedly before the learned Trial Court the plaintiff has filed Title Suit No.301 of 2024 against the opposite parties praying for recovery of possession from the suit properties particulars of which have been mentioned in the Schedule A and B of the plaint. It is the case of the plaintiff/petitioner before the Trial Court that taking the advantage of his absence the defendants are

making attempt to create third party interest as well as they are also making an attempt to carry out the construction work over the suit properties and further defendants are also making an attempt to initiate a business over the suit properties.

10. On perusal of the entire file of papers it reveals that a coordinate Bench by its order dated 03/09/2024 passed an order of *status quo* in respect of the possession of the suit property with a further direction to the parties not to change/alter the nature and character of the suit property or create any third party interest thereon during the pendency of the instant revisional application till further order. Admittedly, before the learned Trial Court the defendants have not filed their writ objection against the injunction application since no notice was served upon the defendants from the Trial Court.
11. Such being the position, this Court proposes to dispose of the instant revisional application in the manner indicated hereunder.
12. Learned advocate for the plaintiff/petitioner who is appearing before this Court is directed to serve the copy of the plaint and the copy of the injunction application as filed in Title Suit No.301 of 2024 to the learned advocate for the opposite parties/defendants herein positively within January 10, 2025. In the event such service is effected it will be deemed that the defendants have received the summons and notice to injunction application in Title Suit No.301 of 2024.

13. Upon such service the defendants are directed to appear either personally or through their lawyer before the learned Trial Court in the said suit positively on or before the last day of January, 2025.
14. Liberty is given to the opposite parties/defendant Nos.1 to 4 to file their written objection/affidavit-in-opposition before the learned Trial Court either on the very day of their appearance or within a week thereafter after serving a copy of the same to the learned advocate for the plaintiff before the learned Trial Court.
15. The opposite parties/defendant Nos.1 to 4 are also to file their written statement(s) before the learned Trial Court also within the same period as reflected in the earlier paragraph.
16. Liberty is given to the plaintiff in Title Suit No.301 of 2024 to file reply to such written objection/affidavit-in-opposition within a week thereafter after serving a copy of the same to the learned advocate for the defendants.
17. Learned Trial Court is hereby requested to make an endeavor to dispose of the injunction application as filed in Title Suit No.301 of 2024 preferably within the last day of February, 2025 without being influenced by any observation made in this order.
18. The order of *status quo* as well as the ad-interim nature of prohibitory injunction as passed on 03/09/2024 by a co-ordinate Bench of this Court in this revisional application shall continue till the last day of February, 2025.

19. Liberty is given to the learned Trial Court to extend the aforementioned interim order beyond the last day of February, 2025 upon showing appropriate cause in his order sheet if such an application is made by the plaintiff or in the event the hearing of the injunction application cannot be concluded of within the specified time as directed by this Court.
20. With the aforementioned observation **CO 127 of 2024** is disposed of along with all pending interim applications.
21. With the disposal of the instant revisional application, the Misc. Appeal No.40 of 2024 as pending before the learned District Judge, Jalpaiguri stands hereby disposed of.
22. Department is directed to forward a copy of this order to the learned Civil Judge (Junior Division), Jalpaiguri forthwith for his information and compliance.
23. Department is further directed to forward another copy of this order to the learned District Judge, Jalpaiguri for his perusal and record.
24. Urgent Photostat certified copies of this order, if applied for, be supplied to the parties upon compliance with all necessary formalities.

*(Partha Sarathi Sen, J.)*