

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 Biswaroop Chowdhury

FMA 27 of 2026
IA No: CAN 1 of 2026

Prabir Biswas and another
Vs.
Asish Kumar Paul and others

For the appellants : Mr. Siddheswar Chandra,
Mr. Sandip Dutta

For the respondent no.1 : Mr. Arijeet Doss Mullick,
Ms. Pallabi Sardar

Heard on : 07.05.2026

Judgment on : 07.05.2026

Sabyasachi Bhattacharyya, J.:-

1. The conspectus of the present appeal is short. The appellants/ subsequent purchasers of a property, after getting impleaded in the suit filed by the plaintiffs/respondents, sought an injunction restraining the plaintiffs from disturbing the appellants from making repair in respect of their occupied portion of the premises.
2. By the impugned order, although a limited repair was permitted, restricted to the existing main entrance door of the suit building, the application was postponed for hearing after the disposal of the prior

injunction application pending at the behest of the plaintiffs/respondents.

3. Learned counsel for the appellants submits that the rest of the repair work which has not been permitted is confined only to the plastering of the walls and patch repairing of the flooring of the purchased portion of the appellants and, thus, ought to have been allowed as well.
4. Learned counsel appearing for the plaintiffs/respondents controverts such submissions and argues that there is already a subsisting notice under Section 401 of the Kolkata Municipal Corporation Act in respect of the building-in-question. The repair sought by the appellants, it is argued, would frustrate the same. Even otherwise, the plaintiffs/respondents express their apprehension that in the garb of the repair, major addition/alteration to the premises may be effected, which might also affect the rights of the parties in the pending suit as well as hamper the security of the other portion of the suit property which is occupied by the plaintiffs/respondents.
5. However, we find that the ambit of the repair sought by the appellants, apart from what has already been permitted to them, is limited only to the plastering of the walls and patch repairing of the floors of the purchased portion of the appellants.
6. Since the appellants are admittedly in possession of the said portion and have purchased the same, they have a right to repair the same in order to keep the same in habitable condition.

7. Insofar as the subsistence of a notice under Section 401 is concerned, the same cannot be a deterrent to permit the appellants to complete such repair work, in view of the scheme of the Kolkata Municipal Corporation Act that a prior opportunity is given to the occupiers to make good the deficiencies in a building prior to demolition of the same.
8. In any event, the repair work, if permitted, shall not affect the rights and contentions of the parties prejudicially in the suit as well as the pending injunction application of the plaintiffs/respondents.
9. Accordingly, FMA 27 of 2026 is allowed in part, thereby partially modifying the impugned order, bearing Order No. 49 dated September 11, 2025 passed by the learned Judge, Thirteenth Bench, City Civil Court at Calcutta in Title Suit No. 1098 of 2021, and permitting the appellants to undertake repair works in respect of their purchased portions of the suit property to the limited extent that the plastering of the walls and patch repairing on the floor of the said purchased portion shall be done by the appellants.
10. It is made clear that in the garb of such repair work, no substantial addition or alteration to the suit premises shall be done by the appellants. The appellants shall undertake such repair work at their own cost and without prejudice to the rights and contentions of the parties in the suit and shall not claim any special equity merely by dint of such repair work at the final hearing of the suit.
11. The injunction application filed by the appellants in the Trial Court is thus deemed to stand disposed of.

12. However, we further clarify that this Court has not touched upon the merits of the suit and/or the pending injunction application of the plaintiffs/respondents.
13. CAN 1 of 2026 is consequentially disposed of.
14. There will be no order as to costs.
15. Urgent photostat certified copies of this order, if applied for, be made available to the parties upon compliance with the requisite formalities.

(Sabyasachi Bhattacharyya, J.)

I agree.

(Biswaroop Chowdhury, J.)