

Form No. J(2)

In the High Court at Calcutta

Civil Appellate Jurisdiction

Appellate Side

Present: The Hon'be Justice Sabyasachi Bhattacharyya
And
The Hon'ble Justice Supratim Bhattacharya

F.M.A. 309 of 2026
IA No: CAN 1 of 2026

**Noor Hasan and another
Vs.
Hafeez Akhtar Ansari**

For the appellants : Mr. Abhijit Ray
Mr. Rajiv Kumar
Mr. Santu Nandy

For the respondent : Mr. Kasinath De
Mr. Ejaz Khan
Mr. Pradip Kr. De
Mr. Debnath Mahata

Heard on : 02.03.2026

Judgment on : 02.03.2026

Sabyasachi Bhattacharyya, J.:-

1. The present appeal has been preferred against an order whereby *ad interim* order of injunction has been refused.
2. Learned counsel for the plaintiffs/appellants argues that the suit is for declaration that the defendant/respondent is a trespasser by operation of Section 2(g) of the West Bengal premises Tenancy Act, 1997.
3. it is submitted that despite a *prima facie* case having been made out, the learned Trial Judge refused *ad interim* injunction merely on the ground that in his opinion, it would not be expedient to pass any *ad interim* order without giving an opportunity to the defendant of being heard, overlooking that the defendant had already entered appearance, citing the violation of principles of natural justice.
4. We find from a perusal of the impugned order itself that the defendant entered appearance before the learned Trial Judge on the said date and in any event, in the absence of any caveat being lodged, the learned Trial Judge could not have refused *ad interim* injunction without adverting to the materials before the said court, since at the *ex parte ad interim* stage, it is the averments made in the plaint and the injunction application and

the materials annexed thereto which are to be taken as sacrosanct.

5. Accordingly, we admit the appeal, to be heard on the above question as well as the other grounds taken in the Memorandum of Appeal.
6. In view of the question involved being short and taking advantage of the fact that the respondent is represented through counsel before us, we take up the appeal itself for hearing along with the application.
7. Learned counsel appearing for the appellant, apart from the arguments which have been recorded above, cites a judgment of a three-Judge Bench of the Kerala High Court in the matter of *K. Sadasivam vs. Surendradas*, reported at 2021 (1) ICC 1008 (Ker.).
8. In the said Full Bench Judgment, it was, *inter alia*, observed that Section 148A (of the Code of Civil Procedure) does not completely denude the powers of the court to pass appropriate orders in a given case, if justice so demands.
9. Learned counsel appearing for the appellants further hands over a copy of an interim order passed by the Executive and Judicial Magistrate, Tenth Court at Calcutta (Executive Metropolitan

Magistrate) in M. Case No.45 of 2026 on February 12, 2026, whereby the respondent has been restrained from carrying out any construction/demolition work over the suit property.

- 10.** Learned counsel appearing for the defendant/respondent submits that the date on which the impugned order was passed was not even a date for hearing the injunction application but merely for ascertaining service return.
- 11.** Thus, there was no occasion for the defendant/respondent to advance any arguments in support of his case.
- 12.** Hence, although the defendant merely appeared on the said date by filing a fresh Vakalatnama, there was no opportunity as such for the defendant to argue the case on merits.
- 13.** Secondly, it is contended that the prayer made in the injunction application is in the nature of fraud on the court, since in an earlier suit between the same parties, a similar prayer for injunction was refused by the court.
- 14.** Learned counsel cites a copy of Order No.17 dated January 16, 2024 passed by the learned Judge, Fifth Bench, City Civil Court at Calcutta in Title Suit No.1244 of 2022 where, upon contested hearing, an application for temporary injunction filed the

present plaintiffs/appellants was dismissed as against the present respondent.

- 15.** While passing such order, the learned Trial Judge had observed that on perusal of a notice dated June 6, 2022 (under Section 411 of the Kolkata Municipal Corporation Act), it appeared that the defendant no.1 (present respondent), on behalf of the other tenants, had requested the plaintiff to carry out the suggested repairing work according to the inspection report dated May 14, 2022 issued by Mr. Rupak Kumar Banerjee, ECE of KMC, without causing any damage to the building and the tenanted portion and without changing the dimensions and character of the building.
- 16.** Learned counsel for the respondent herein relies on the said order and the notice of the KMC and submits that in view of the said notice under Section 411 of the KMC Act, a copy of which is also handed over to court, the inhabitants of the suit premises are under serious risk to their life and limb due to the dilapidated condition of the suit building.
- 17.** Moreover, unless statutory compliances are done, which the defendant/respondent, in the capacity of an occupier of the premises, can also do, the defendant/respondent also runs the

risk of the building itself being demolished by the Kolkata Municipal Corporation.

- 18.** Thus, it is argued that the learned Trial Judge rightly refused the ad interim prayer of injunction.
- 19.** Upon hearing learned counsel for the parties, we find that the ratio laid down in *K. Sadasivam vs. Surendradas (supra)* by the Full Bench judgment of the Kerala High Court is indisputable.
- 20.** However, the said principle is not germane here, since the plaintiffs/appellants herein stand on a somewhat better footing than the said case, as no caveat was lodged before the trial court.
- 21.** That apart, although there may be substance in the contention of the defendant/respondent that on the date of service return, when the injunction application was not fixed, there was no occasion for the defendant/respondent to make elaborate submissions, still, since the defendant/respondent appeared on the said date before the learned Trial Judge, nothing prevented them from at least making an oral submission as to the existence of the earlier order of dismissal of an injunction application of the appellants as well as the notice under Section 411 of the Kolkata Municipal Corporation Act.

- 22.** Even apart from the above, we find that the notice under Section 411 of the KMC Act was issued as long back as on April 3, 2022.
- 23.** If the parties could survive in the said premises for the long period of about four years from the date of such notice, it cannot be said that all on a sudden extreme urgency has emanated due to such notice for the purpose of making repairs to the premises.
- 24.** Even otherwise, the prayer made by the plaintiffs/appellants is not intended to stop the entire repair work at the premises and at all points of time, it is open to the parties to seek necessary permission for carrying out repair works.
- 25.** However, since a *prima facie* case of the status of the defendant/respondent being a trespasser under Section 2(g) of the 1997 Act has been made out, this court is of the opinion that the defendant/respondent cannot be permitted to alter the nature and character of the suit property in the garb of compliance of a notice under section 411 of the KMC Act, which was issued four years back.
- 26.** Thus, FMA 309 of 2026 is allowed on contest, thereby setting aside the impugned order and restraining the defendant/respondent and/or his men and agents by an order of injunction from changing the nature and character of the suit

property till disposal of the temporary injunction application pending in the trial court.

- 27.** However, we make it clear that the merits of the injunction application or the suit have not been conclusively decided by us and the learned Trial Judge shall be at liberty to dispose of both independently on their own merits without being influenced unnecessarily by any of the observations made above.
- 28.** Since we have been apprised that a written objection has already been filed to the temporary injunction application, it is expected that the learned Trial Judge shall dispose of the temporary injunction application itself, upon hearing both sides, as expeditiously as possible, positively within four weeks from the date of communication of this order to the learned Trial Judge.
- 29.** We further make it clear that nothing in the above order shall prevent either of the parties to apply before the learned Trial Judge for making necessary repair works to the suit property, if necessary. If such an application is made, it will be open to the learned Trial Judge to decide the same on its own merits, upon ensuring, however, that the nature and character of the suit property is not altered under the pretext of repair.

- 30.** CAN 1 of 2026 is disposed of in the light of the above observations.
- 31.** There will be no order as to costs.
- 32.** Urgent photostat copies of this order, if applied for, be given to the parties upon compliance of all requisite formalities.

(Sabyasachi Bhattacharyya, J.)

I agree.

(Supratim Bhattacharya, J.)

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