

23.06.2026  
Court No.2  
Item No.65  
sudipta

**IN THE HIGH COURT AT CALCUTTA  
CIVIL REVISIONAL JURISDICTION  
APPELLATE SIDE**

**CO 4055 of 2024  
With  
CAN 1 of 2025**

**Transparency Builders Private Limited & Anr.  
Vs.  
Sekhar Roy & Anr.**

Mr. Tarique Quasimuddin  
Mr. Abbas Ibrahim Khan

...for the petitioners

Mr. Prabhat Kumar Singh  
Mr. Dipankar Mondal  
Mr. Prashant Kumar Singh

...for the opposite parties

1. Present petition has been filed challenging the order dated 7<sup>th</sup> October, 2024 passed by the Learned Judge, Bench-VI, City Civil Court, Calcutta in Title Suit No. 518 of 2022 whereby the application filed by the petitioner / defendant under Section 151 CPC was dismissed. The petitioner aggrieved of this has invoked the jurisdiction of this Court.

2. Briefly stated the facts are that the opposite party / petitioner filed Title Suit No. 518 of 2022 for declaration of permanent injunction along with an application for injunction. The suit was taken up for hearing on 8<sup>th</sup> March, 2022. On 8<sup>th</sup> March, 2022 following order was passed.

“Order No.2

Date:08.03.2022

Hazira has been filed today on behalf of the Plaintiff.

Defendants / Caveators appears today being represented by their Ld. Advocate.

The prayer for ad interim relief of injunction has been moved today on behalf of the plaintiff and with this contention that there is extreme urgency in this matter, because of negotiation as being taken up by the defendants to create third party interest in respect of the suit property.

Ld. Advocate appears on behalf of the defendants has submitted that, he needs some time to file written objection against the application for injunction as filed by the Plaintiff. However, he has disputed regarding contention of the plaintiff, initiatives on the part of the defendants for creating third party interest out of the suit property and for carrying on construction violating the notice of municipal authority and he has further contended that on behalf of the defendant, he has given the undertaking as being instructed by his client being present in the Court that they will not proceed with the construction work or any negotiation for creating any third party interest in respect of the suit property till disposal of this application.

He has further submitted that in view of the undertaking as it is given today on behalf of the defendant, matter may be fixed as an early date for the convenience of both sides.

Considering the submissions of the Ld. Advocates appearing on behalf of the respective sides, it is a view of this Court that, without giving opportunity to the defendants, caveator to file the written objection against the injunction application as filed by the plaintiff, hearing of injunction cannot be taken place. In view of that, they will be given reasonable opportunity and time to file written objection as they prayed for today.

However, in the light of undertaking as given before this Court today on behalf of the defendant, the defendants are directed to abide by their own undertaking as given before this Court through their Ld. Counsel.

Prayer for granting time to file written objection is allowed.

Written objection be filed in the meantime.”

3. Subsequently, the application for injunction was taken up for hearing on 5<sup>th</sup> July, 2024. The learned Trial Court vide order no. 42 dated 5<sup>th</sup> July, 2024 vide a detailed order restrained the defendant / petitioner from

selling, transferring, conveying, encumbering or parting with the possession of premises no. 3, Tottle Lane, Kolkata 700016 till disposal of the suit.

4. While the matter rested thus, the plaintiff / opposite party filed an application under Section 151 CPC seeking a direction to the Officer-in-Charge, New Market P.S. as well as Commissioner of Police, Kolkata to ensure that order dated 8<sup>th</sup> March, 2022 and 5<sup>th</sup> July, 2024 are strictly complied. Learned Trial Court vide order dated 26<sup>th</sup> September, 2024 passed the following order.

“Order No. 47, date 26.09.2024

Today the record is put up as per prayer of the Plaintiff, who files one application u/s. 151 of C.P.C. praying for an order directing the Officer-In-Charge, New Market P.S.. as well as Commissioner of Police, Kolkata to see that the order passed by this Court dated 08.03.2022 and 05.07.2025 are strictly implemented and complied with against the Defendants and to ensure that no violation is committed to those orders by the Defendant. Copy of the same is received by the Defendant.

The Plaintiff also files one application under Order 26 Rule 9 read with section 151 of the C.P.C. Copy served upon the Defendant, which is received with objection.

On behalf of the Defendants, two sets of application for adjournment is seeking for hearing of the petition filed by the Plaintiffs. Copy is not served.

Heard Ld. Advocate for the Plaintiff and also the Defendant.

The Ld. Advocate for the Defendant stated that an objection is required to be filed against the application filed u/s. 151 of C.P.C. by the Plaintiff.

Ld. Advocate for the Plaintiff stated that whatever prayer they have made is very pertinent as it is the duty of both the parties to the suit to abide by the direction of this Court. As the Plaintiff stated that due to wrongful act, the order passed by this Court has been violated for which a supervision is required by the local P.S. as to whether the order passed by this Court has been strictly complied with or not.

Without prejudice the interest of the parties, I think it is the duty of the Court to preserve the order passed by it in proper manner and in that occasion, if either party to the suit is violating the same that should be stopped with the intervention of the police. Whatever allegation given by the Plaintiff in this case coupled with the order passed by this Court, I think the prayer made by the Plaintiff is modest and for the interest of justice, the same should be allowed without prejudicing the interest of the Defendant.

Accordingly, the O.C., New Market P.S. is directed to see that the order passed by this Court on 08.03.2022 and 05.07.2024 has been properly maintained by both the sides, or not and to report this Court by the date fixed.

Let this order along with the copies of order dated 08.03.2022 and 05.07.2024 be communicated to the O.C., New Market P.S. for information and taking necessary action and report this Court by 13.01.2025.

To 13.01.2025 for submission of report and for hearing of the petition under 1 Rule 10(2) of C.P.C. read with section 151 of C.P.C. and also the petition under Order 39 Rule 4 of C.P.C. and also hearing of acceptance of W/S. W/O in the meantime.”

5. The defendant / petitioner herein filed an application under Section 151 CPC, inter alia, stating that in absence of any restrain order of the learned Trial Court regarding the construction and in view of the fact that revised sanctioned plan has been issued by the Kolkata Municipal Authority, police has no authority to stop the construction. This application was dismissed by the impugned order dated 7<sup>th</sup> October, 2024 which is the subject matter of the present petition. In the meanwhile, an application under Order 39 Rule 4 filed by the defendant / petitioner for modification of order was dismissed by the learned Trial Court vide order dated 7<sup>th</sup> December, 2024.

6. Learned counsel for the petitioner has submitted that in the order dated 5<sup>th</sup> July, 2024, vide which the injunction application was decided, there was no

injunction regarding the construction in the premises in question and, therefore, the learned Trial Court fell into an error by issuing the direction to the police vide order dated 26<sup>th</sup> September, 2024 and further by dismissing the application under Section 151 CPC vide order dated 7<sup>th</sup> October, 2024.

7. Per contra, learned counsel for the opposite party / plaintiff submitted that as there was a clear undertaking given by the defendant / petitioner on 8<sup>th</sup> March, 2022, that they will not proceed with the construction work, they are estopped from carrying out any construction. It was submitted that the defendant / petitioner has no authority to carry out the construction activities whether any revised sanctioned plan has been approved by the KMC or not. Learned counsel submits that if the construction activity is carried out, it will irreparably prejudice the opposite party / petitioner.

8. I have heard the learned counsel for the parties and perused the record carefully. The order dated 8<sup>th</sup> March, 2022 as has been reproduced above was passed by the learned Trial Court at the initial stage when there was a prayer for ad interim injunction. This was possibly the first date of hearing when even the written statement was not filed. It is also pertinent to mention that the learned Trial Court had merely recorded the undertaking of the petitioner / defendant and issued a

direction to abide by their undertaking given before the Court.

9. The injunction application was taken up for hearing on 5<sup>th</sup> July, 2024 and in this detailed order passed by the learned Trial Court, whereby the contention of both the parties were taken into account, the learned Trial Court passed an injunction order only in respect of creating third party interest. No order was passed relating to the construction in the premises in question. The order dated 8<sup>th</sup> March, 2022 automatically comes to an end, when the injunction application was disposed of by the learned Trial Court. The order of the learned Trial Court passed subsequently on application under Section 151 CPC on 26<sup>th</sup> September, 2024 filed by the plaintiff / opposite party is without any basis as the order dated 8<sup>th</sup> March, 2022 had merged with the order dated 5<sup>th</sup> July, 2024. Similarly the impugned order dated 7<sup>th</sup> October, 2024 has also not taken this point into consideration and has been passed mechanically and thus liable to be set aside. It is also pertinent to mention here that even in the order dated 7<sup>th</sup> December, 2024 whereby application under Order 39 Rule (4) was decided there was no discussion as to the modification of the order regarding the construction.

10. The Court, therefore, considers that the order dated 26<sup>th</sup> September, 2024 and 7<sup>th</sup> October, 2024 are liable to be set aside. The injunction application has been decided by the learned Trial Court vide order dated 5<sup>th</sup> July, 2024. However, this will not preclude the opposite party / plaintiff from filing a fresh application for injunction before the learned Trial Court.

11. In view of the discussions made hereinabove, the present petition stands disposed of. Connected pending application, if any, stands disposed of.

12. It is made clear that the learned Trial Court shall decide the matter independently without being influenced by the order of this Court.

13. All parties shall act on the basis of the server copy of this order duly downloaded from the official website of this Court.

**(Dinesh Kumar Sharma, J.)**