

S/L 5
13.05.2026
Court. No. 5
sourav

CALCUTTA HIGH COURT
IN THE CIRCUIT BENCH AT JALPAIGURI

CO 53 of 2026

Naushaba Siddique
Vs.
M/s Lama Hotels Private Limited & Anr.

Mr. Ved Rai

...for the petitioner.

Ms. Rima Sarkar

...for the opposite parties.

1. The petitioner has filed the present revisional application being CO 53 of 2026 challenging the order passed learned Civil Judge (Senior Division), Darjeeling vide order no. 31 dated February 2, 2026 wherein the learned Civil Judge (Senior Division), Darjeeling has allowed the application filed by the plaintiff for appointment of Commissioner under Order 39 Rule 7 of the Code of Civil Procedure and directed the Advocate Commissioner to hold the local inspection of the suit scheduled property after due service of notice to the parties or their respective learned advocates and will videograph the suit scheduled property and will take still photographs from different angles and meet up the questions as mentioned in the petition and filed his report before the learned Court.
2. The plaintiff has filed the suit against the defendant for permanent injunction restraining the defendant no. 1 from making

any illegal construction in violation of the Municipal Act Rules and Bylaws as well as the prayed for decree of mandatory injunction against the defendant no. 2 to dismantle the illegal structure constructed by the defendant no. 1 in violation of the Municipal Act Rules and Bylaws in the Scheduled B property.

3. At the time of filing of the suit, the plaintiff has also filed an application under Order 39 Rules 1 and 2 of CPC for grant of ad interim injunction. By an order dated December 15, 2023, the learned Civil Judge (Senior Division), Darjeeling has passed an interim order restraining the defendant from carrying on any illegal construction in and upon the G+5 structure over B Scheduled property.
4. The defendant has filed an application for vacating the interim order passed by the learned Judge dated December 15, 2023. By an order dated May 14, 2023, the learned Judge has rejected the application filed by the defendant for vacating the interim order.
5. Being aggrieved with the said order, the defendant has preferred a Misc. appeal before the learned District Judge being Misc. Appeal No. 59 of 2024. The learned District Judge has also dismissed the Misc. Appeal on September 20, 2024 by affirming the order passed by the learned Civil Judge (Senior

Division), Darjeeling with the direction to the learned Judge to dispose of the suit preferably within a period of six months without granting any unnecessary adjournment.

6. The plaintiff has filed an application under Order 39 Rule 7 of the CPC for appointment of Commissioner. The defendant has filed objection of the said application and after hearing the parties, the learned Civil Judge (Senior Division), Darjeeling has rejected the application filed by the plaintiff for appoint of Commissioner on the ground that paragraph 7(a) of the application is contrary to its plaint and confusing as to what the plaintiff needs to plead. The said application was dismissed with the cost of Rs. 1,000/- against the plaintiff.
7. Subsequent to the rejection of the said application, the plaintiff has again filed an application under Order 39 Rule 7 read with Section 151 of the CPC for appointment of Commissioner. The learned Trial Court has allowed the said application which is impugned in the present application.
8. The plaintiff has filed the application under Order 39 Rule 7 read with Section 151 of the CPC praying for appointment of Commissioner on the following points: a) to take photographs of the scheduled B

property; b) whether the defendant no. 1 is still carrying on with the illegal construction in and upon the holding fully detailed and described in the scheduled B property; and c) the total storied constructed by the plaintiff in and upon the scheduled B property.

9. The application filed by the plaintiff for appointment of Commissioner on the allegation that in spite of the order passed by the learned Trial Court, the defendant is still continuing with the illegal construction and has already constructed more than seven storied building fully detailed and described in the scheduled B property. The learned Trial Court while allowing the application filed by the plaintiff under Order 39 Rule 7 of the CPC has categorically come to the finding that in order to solve the issue in dispute, the Court finds that the inspection of the suit premises is necessary to ascertain whether any such alleged construction is made out or not.
10. In view of the above, this Court does not find any illegality in the impugned order passed by the learned Trial Judge vide order no. 31 dated February 2, 2026.
11. Accordingly, **CO 53 of 2026** is dismissed.

(Krishna Rao, J.)