25.11.2026
Item No.3 (DL)
Court No.04
AJ.

IN THE HIGH COURT AT CALCUTTA
CIRCUIT BENCH AT JALPAIGURI

CIVIL REVISIONAL JURISDICTION

C.O. 187 of 2026

Sri Dhirendra Subba & Ors.
-Vs-
The Block Development Officer, Mirik & Ors.

Mr. Sandip Mandal,
Mr. Amit Saha,
Ms. Poonam Kaur,
Mr. Samrat Acharya.
.....for the petitioners.

Mr. Kunaljit Bhattacharjee, Ld. A.G.P.,
Mr. Radhika Agarwal.
.....for the Satate.

1. Affidavit of service filed in Court today is taken on record. The opposite party nos.1, 2, 3 and 8 are represented.

2. The present revisional application assails an order dated September 19, 2026 passed by the learned Additional District Judge, Kurseong in Title Appeal No. 01 of 2025 whereby the petitioners' application for injunction under Order XXXIX Rules 1 and 2 of the Code of Civil Procedure, 1908 has been dismissed.

3. The petitioners had instituted Title Suit No. 02 of 2024 before the learned Civil Judge (Junior Division), Mirik against the opposite parties herein praying for decrees of declaration, and injunction and for other consequential reliefs.

4. In the said suit, the opposite parties filed an application for rejection of plaint under Order VII Rule 11 of the Code. The said application was allowed and the petitioners' plaint was rejected.

5. Feeling aggrieved thereby the petitioners approached the learned Appellate Court by filing Title Appeal No. 01 of 2025. In the said appeal, the petitioners initially made an application for injunction which was rejected. The said order was carried in revision being C.O. 150 of 2025 before this Court. C.O. 150 of 2025 was disposed of by a co-ordinate Bench of this Court on November 19, 2025 holding that since the suit stands dismissed and is yet to be restored, it would not be prudent to grant an order of injunction at that stage particularly when the petitioners were not enjoying any interim order during the pendency of the suit.

6. By the said order, the petitioners were granted liberty to approach the Court *in seisin* to Title Appeal No. 01 of 2025 for appropriate relief, if occasion so arose.

7. During pendency of the said appeal, the petitioners filed another application for injunction contending that the opposite parties have begun changing the nature and

character of the property in suit. Such application has been turned down by the order impugned. Hence the present revisional application.

8. Mr. Mandal, learned Advocate appearing for the petitioners submits that this Court had while disposing of C.O. 150 of 2025 granted leave to the petitioners to approach the Court having *seisin* over the petitioners' appeal for appropriate relief, if occasion so arose. It is submitted that since the opposite parties are taking hasty steps to change the nature and character of the property in suit, the petitioners are entitled to an order of injunction restraining the opposite parties from taking any step in respect of the suit properties till disposal of the appeal.

9. Mr. Bhattacharyya, learned Additional Government Pleader submits that the order impugned is impeccable inasmuch as, upon rejection of the plaint, the learned Appellate Court is denuded of its jurisdiction to grant any order of injunction. In support of his contention, he relies on a judgment of the Hon'ble Supreme Court in the Case of ***IEEE Mumbai Section Welfare Association –Vs- Global IEEE Institute for engineers*** reported at ***AIR Online 2025 SC 807***.

10. Mr. Mandal submits that the learned Appellate Court retains jurisdiction to pass an order of injunction and in support of his such contention he relies on a judgment of the Hon'ble Supreme Court in the case of ***Mohammadhanif Mohammadibrahim Patel & Ors. –Vs- Pallaviben Rajendra Kumar Patel & Ors*** reported at ***2025 SCC Online SC 2526.***

11. Heard learned Advocates appearing for the respective parties and considered the material-on-record.

12. This is a case where, as already indicated, the petitioners' plaint has been rejected under Order VII Rule 11 of the Code. The Hon'ble Supreme Court in ***IEEE Mumbai Section Welfare Association*** (supra) has held that in cases where the plaint has been rejected an appeal filed against an order rejecting the plaint cannot be said to be continuation of the suit and no order of temporary injunction can be passed in such case until the plaint is revived or restored.

13. The judgment in the case of ***Mohammadhanif Mohammadibrahim Patel & Ors.*** (supra) was passed by the Hon'ble Supreme Court in the context of a regular First

Appeal against a consent decree which did not involve rejection of plaint.

14. It appears from the order impugned that the appeal itself has been fixed for hearing on November 30, 2026. We are on November 25, 2026 today. It is even less than a week from date when the appeal is scheduled to be heard.

15. In such a situation, it would not be proper for this Court to grant an order of injunction.

16. This Court requests the learned Appellate Court to dispose of the petitioners' appeal which has been pending since the earlier part of the year 2025, expeditiously and preferably within a period of one month from the next date fixed i.e. November 30, 2025 without granting any unnecessary adjournment to either of the parties.

17. C.O. 187 of 2026 stands disposed of. No costs.

15. Urgent photostat certified copy of this order, if applied for, be supplied to the parties subject to compliance with all requisite formalities.

(Om Narayan Rai, J.)