

SL 2 25.06.2026  
Court No.39

(PA)

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

**C.O. NO. 3351 OF 2025**

**Barjahan Ali Sk. @ Barjahan Sk.  
-Vs.-  
Sri Sri Radha Mohan Jew & ORS.**

Mr. Iftekar Munshi,

...for the petitioner

Mr. Partha Pratim Roy,  
Mr. Sarbananda Sanyal,  
Mr. Souma Bhattacharya,  
Mr. Atanu Bhattacharya  
Ms. Anjali Prasad,  
Ms. Rupsa Ganguli,

...for the opposite party no. 2

1. The instant Civil Revisional application under Article 227 of the Constitution of India has been filed by the petitioner/appellant assailing an Order being No. 13 dated 30.07.2025 passed by the Learned Additional District Judge, Diamond Harbour, South 24 Parganas in Title Appeal No. 41 of 2024 arising out of the Judgment and Decree dated 17.08.2024 passed by the Learned Civil (Junior Division), 3<sup>rd</sup> Court, Diamond Harbour in Title Suit No. 160 of 2015 (Barjahan Sekh Vs. Sri Sri Radha Mohan Jew and

Ors. represented by Pradip @ Bablu Mondal and Ors.).

- 2.** By the said order impugned, the Appellate Court rejected the application for temporary injunction which was filed by the petitioner/plaintiff upon failure to prove the prima facie case. The balance of convenience and inconvenience, and irreparable loss and injuries were also not found in favour of the Petitioner/Plaintiff.
- 3.** Learned counsel appearing on behalf of the petitioner submits that the Title Suit arose at the instance of the petitioner for declaration and injunction. The suit property originally belongs to the respondent no. 1/ Sri Sri Radha Mohan Jew Thakur. Rabindranath Das and others were members of the Managing Committee of the deity. They entered into a lease of 33 years for the development of the property with Pankaj Kumar Majhi, Mahadev Bera and Basudev Bera on the condition of giving yearly licence fee to the Managing Committee of the respondent no. 1. Thereafter, the said lessee started to run their brickfield upon the suit property after constructing therein Coolie Shed, office room etc. for the running of the business and continued to pay the yearly licence fee to the Shebait of the deity.
- 4.** On 06.04.1993, the said assignors/lessees sublet the schedule suit property, along with the brickfield situated thereon, to the Petitioner/plaintiff by a

registered deed of assignment for the period of 33 years. Ever since, the Petitioner/plaintiff has been paying a licence fee to the assignors as per the terms of the deed and also invested a huge sum of money in the said brickfield. After taking possession, the Petitioner changed the name of the earlier brickfield from MBP to JUHU BHATA and commenced operations of the said business by producing bricks, engaging 100 employees.

- 5.** The Learned counsel has further contended that the period of the said assignment ended in the year 2013 but even after expiry of the terms of assignment, the Petitioner/Plaintiff continued his business and made several requests to the Managing Director of the said deity for renewal of the period of lease, but in vain, even though a specific term and condition mentioned in the deed was that after expiration of the lease period, if the petitioner intends to carry on his business upon the suit brickfield then the Managing Director of the deity is bound to execute another period of lease deed upon charging fees as per the market value. As such, the appellant had filed Title Suit No. 160 of 2015 before the learned Civil Judge (Jr. Division), 3rd Court, Diamond Harbour, South 24 Parganas, when no steps had been taken towards the renewal of the lease, seeking the reliefs prayed for.
- 6.** During the pendency of the said suit, one Pabitra Halder addressed a letter dated 26.12.2015 to the

Petitioner, claiming that the lease in respect of the suit brickfield had been granted in his favour, calling upon the petitioner to hand over possession thereof. Subsequently, on 20.01.2016, the said Pabitra Halder allegedly trespassed into the suit brickfield by breaking open the padlock, erected a new signboard in the name of "Gaur Krishna Bricks" in front of the brickfield with a view to creating evidence for future use, and caused damage to the goods and machinery lying therein.

- 7.** The suit for declaration and permanent injunction instituted by the plaintiff/appellant, being Title Suit No. 160 of 2015, was ultimately dismissed by the learned Trial Court, allegedly without taking into consideration the entirety of the facts and the documents relied upon by the plaintiff.
- 8.** Being aggrieved by and dissatisfied with the same, the plaintiff preferred an appeal before the Appellate Court. When the appeal was filed, the petitioner also filed an application under Order 39, Rules 1 and 2, read with Section 151 of the CPC. However, even the Appellate Court did not consider that the plaintiff had constructed the brickfield after investing a huge sum of money in the suit property.
- 9.** After hearing the parties, the learned Appellate Court rejected the injunction application when no prima facie case was found in favour of the petitioner.

- 10.** Learned counsel further contended that the plaintiff had earlier challenged an order dated 06.03.2019 in another Revisional Application being CO 1061 of 2019 (Barjahan Ali Sk. @ Barjahan Sk. Vs. Sri Pabitra Halder & Ors.), whereby the Trial Court allowed an application filed by the Respondent No. 2 to repair the suit premises, which was in his occupation particularly wall, coolie shed, a portion of the river dam area and chimney under the supervision of the Commissioner.
- 11.** While disposing of the aforesaid Revisional application, the Hon'ble Co-ordinate Bench observed that it was not wise on the part of the Trial Court to permit the repair work in favour of the Respondent no. 2 when a status quo order had been granted in respect of the existing possession of the parties as well as nature and character of the suit property and/or relating to creation of third party interest, specifically observing therein that the prima facie case had been made out by the plaintiff although it was observed that a new lease deed was executed in favour of the Respondent no. 2. The Trial Court also found as per the report of the local inspection that the plaintiff had purchased the machineries of brickfield, Coolie shed, office room etc. which was still on the suit land.
- 12.** The Trial Court also observed that the plaintiff could not be ousted altogether from the brickfield without

due process of law when the 2<sup>nd</sup> commissioner's report, which was undisputed by the parties, reflected that the suit property was lying vacant and not in running condition, and coolie shed was in a dilapidated condition. The chimney needed repair.

- 13.** In such a situation, it was not proper to permit the repair work to be done by defendant no. 2/opposite party no. 2 in the suit premises and ultimately the Hon'ble Co-ordinate Bench set aside the impugned order whereby permission was granted in favour of the Opposite party No.2/Respondent no. 2 to repair the suit premises and requested the trial court to dispose of the suit itself as expeditiously as the business of the court would permit, preferably within six months from the date of communication of this order to the Court below.
- 14.** The said order passed by the Co-ordinate Bench was not challenged by the Respondent no. 2. Therefore, the observation of the High Court was based on the material on record, i.e., that the petitioner was the owner of the machinery of brickfield, Coolie Shed etc., and it remained on the suit land. An interim injunction should have been granted by the Appellate Court to protect the interest of the petitioner; however, his prayer was rejected. Hence, he prays for an interim order of injunction till the disposal of the appeal.

- 15.** Per contra, the learned counsel appearing on behalf of the respondent/defendant no. 1 vehemently opposed the prayer of the learned counsel appearing on behalf of the petitioner and further submitted that the civil revisional application is not at all maintainable as the impugned order under challenge was against the refusal of an interim injunction under Order 39 Rules 1 and 2, and the same is an appealable order.
- 16.** Secondly, it was submitted that there was an undisputed fact that the Respondent no. 2 was/is in possession of the suit brickfield which is based on a fresh lease deed executed in favour of the Respondent no. 2 by the members of the Managing Committee of the Respondent no. 1. The earlier deed of lease/assignment had expired due to efflux of time and no further renewal was made in favour the petitioner. The suit was also dismissed. The Petitioner failed to prove a prima facie case as regards the right, title, and possession of the suit property; thus, the question of allowing an injunction order does not arise.
- 17.** Learned counsel further submitted that the plaintiff had not filed the suit with clean hands before the Ld. Trial Court; rather, he committed fraud upon the Learned Court below, to establish his possession over the suit brickfield. Actually, the plaintiff/petitioner was not in possession at the time of filing the suit. Upon consideration of all the materials on record, the

Trial Court held that the lease granted in favour of the plaintiff in respect of the suit brickfield was determined by efflux of time as per the provision of Section 111(a) of the Transfer of Property Act on the expiry of the lease period in 2013. Even after the expiry of the lease deed, the plaintiff claimed that he was in possession of the suit brickfield. However, he has failed to establish his contention by any cogent document in respect of his payment of the licence fee or rent to the Shebait of the deity after the expiry of the lease period, from which it cannot be ascertained that the plaintiff possessed the suit brickfield at the time of filing of the instant suit before the Ld. Court. Accordingly, the Trial Court held that the petitioner failed to establish his right, title, interest and possession upon the suit brickfield. Therefore, he is not entitled to any relief as prayed for.

- 18.** In reply, the learned counsel appearing on behalf of the petitioner submitted that it was true that the possession of the suit brickfield is lying with the Respondent no.1, but the possession was taken forcibly without due process of law during the pendency of the suit. However, the petitioner is the owner of the machinery lying in the suit premises. Hence, an injunction is necessary to protect such machinery and fixtures until the appeal is disposed of.

**19.** Learned counsel further submitted that the civil revisional application against the rejection of the temporary injunction application by the Appellate Court is maintainable. Learned counsel has placed reliance on the decision of this court passed in the case of **Mira Chatterjee & Ors. v. Joydeb Chatterjee**<sup>1</sup> particularly in paragraphs nos. 11 and 12 as under: -

*“11. We are also not impressed by the submission of the learned counsel for the appellant that an appeal being really the continuation of a suit, an order passed on an application under Order XXXIX, Rules 1 and 2 of the Code in an appeal would come within the purview of Order XLIII, Rule 1(r) of the same. In our opinion, an appeal may be treated as a continuation of the “lis” between the parties but should never be treated as the continuation of the suit within the scheme of the Code. According to the design provided in the Code, a suit commences with the presentation of a plaint and culminates either in a decree or in rejection of the plaint; however, if the trial Court returns a plaint for want of jurisdiction, the suit will come to an end, the moment the plaint is so returned and the suit will revive from the date of representation before the Court having jurisdiction and all interim orders passed earlier will have no further effect. If the intention of the legislature were to treat the appeal as the continuation of the suit, it would not separately specify the power of the appellate Court in Section 107 or a different procedure for appeal in Order XLI of the Code.*

*12. We, therefore, find that this First Miscellaneous Appeal is not maintainable as the order impugned does not come within the purview of Order XLIII, Rule 1(r) of the Code because the same is attracted only when an order under Order XXXIX, Rule 1, 2, 2A, 4 or 10 is*

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<sup>1</sup> 2007 SCC OnLine Cal 298

*passed in a suit, and, accordingly, we dismiss this appeal on that ground alone.”*

- 20.** He further relied upon the decision in the case of ***Sabyasachi Chatterjee Vs. Prasad Chatterjee and Ors. WITH Gopal Das Bagri Vs. Brij Mohan Benani and Anr.***<sup>2</sup>, particularly in paragraphs Nos. 3, 4, 6, 7, 8, 9, 14, 16, 27, and 34, wherein a larger bench was called upon to resolve a conflict as to whether an appeal lies from an interlocutory order of injunction passed by an Appellate Court in the course of an appeal from a decree or an appeal from an order. The Court clearly held and laid down the principle that an Appellate Court does not exercise authority directly under Order 38, 39, or 40 of the CPC when passing interlocutory orders; rather, it derives such power exclusively from Section 107(2) read, where applicable, with Section 108 of the CPC, which confers upon it the same powers and duties as a court of original jurisdiction but only to the extent relevant to the scope of the proceedings before it. Since Section 104(2) of the CPC bars any appeal from an order passed in an appeal under that section, and since Section 105(1) prohibits appeals from all other appellate orders unless expressly provided for, and since Order 43 Rule 1 of the CPC only provides for appeals from orders of courts of original jurisdiction and cannot by implication

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<sup>2</sup> 2013 SCC OnLine Cal 13480

extend to interlocutory appellate orders, no appeal lies from an interlocutory order passed by an Appellate Court in exercise of its power under Section 107(2) of the CPC. Accordingly, the Court disposed of both references by holding that no appeal, whether under Order 43 Rule 1(r) or otherwise, was maintainable from the impugned orders, while clarifying that petitions under Article 227 of the Constitution remained maintainable before the High Court in its supervisory jurisdiction, and that the absence of an efficacious appellate remedy need not be a barrier to entertaining such petitions.

- 21.** Having considered the submissions and on perusal of the impugned order passed by the Appellate Court, this Court finds that the Appellate Court rejected the injunction application in a Title Appeal. The Hon'ble Court, in the aforesaid judgments, relied upon by the Petitioner, has categorically held that the Appeal is not maintainable against the rejection of temporary injunction application by the Appellate Court as the order impugned does not come within the purview of Order XLIII, Rule 1(r) of the Code because the same is attracted only when an order under Order XXXIX, Rule 1, 2, 2A, 4 or 10 is passed in a suit by a Trial Court. When there is no provision for appeal, the revisional application filed under Article 227 of the Constitution is maintainable.

Accordingly, this Court is not in agreement with the argument made by the learned counsel for the Respondent No. 2 that the temporary injunction application rejected by the Appellate Court is an appealable order.

- 22.** It is further admitted that the Respondent No.2 is in physical possession of the suit brickfield. It was alleged that the respondent no.2 forcibly dispossessed the petitioner during the pendency of the suit on 20.01.2016. However, the Trial Court, after considering the evidence of both sides, finally dismissed the suit filed by the Petitioner/plaintiff and discarded the claim of the Petitioner/Plaintiff.
- 23.** The Trial Court, while dismissing the suit, further held that actually the plaintiff had not been in possession at the time of filing the suit, and the plaintiff had tried to commit fraud upon the Learned court, suppressing the facts, upon consideration of the report of the two commission works done by the Learned Advocate Commissioner. The incident of trespass committed by the respondent no.2 forcibly upon the suit property is a fabricated and concocted story of the plaintiff.
- 24.** The Plaintiff failed to make any prayer for recovery of Khas possession of the suit brick field in the prayer portion of the plaint, therefore, it was decided by the trial court that suit is barred by the proviso attached to section 34 of the Specific Relief Act on account of

omission to the make prayer for cancellation of the alleged lease deed in favour the respondent no.2 as well as recovery of the Khas possession of the suit brick field.

- 25.** The case of the Petitioner was that the lease expired in the year 2013 till 2015, no lease was further renewed by the Sebait of the deity, i.e., the respondent no. 1, and further considering the prayer made in the injunction application filed before the Appellate Court, this Court does not find any prima facie case in favour of the petitioner. The petitioner fails to prove the prima facie case in his favour. The balance of convenience and inconvenience is also not in his favour since he is not in possession of the suit brickfield. No lease/assignment/licence has been renewed in favour of the Petitioner as yet. Thus, the petitioner fails to establish his case in positive. Therefore, the Appellate Court has rightly rejected his injunction application, and as such, the impugned order calls for no interference.
- 26.** Accordingly, **C.O. No. 3351 of 2025** is, thus, **dismissed** without order as to costs. Connected applications, if any, are also, thus, disposed of.
- 27.** Let a copy of this Order be sent to the Learned Court below for information.
- 28.** Interim order, if any, stands vacated.

- 29.** All parties will act on the server copies of this Order uploaded on the official website of this Hon'ble High Court.
- 30.** Urgent photostat certified copy of this Order, if applied for, is to be given as expeditiously to the parties on compliance of all legal and necessary formalities.

**(Ajay Kumar Gupta, J.)**