

IN THE COURT OF THE LD. 3<sup>RD</sup> ADDITIONAL DISTRICT JUDGE

AT BARASAT

~~Title~~ Appeal No. 36 of 2015

In the matter of:

An application u/s. 340 read with 195

of the Code of Criminal Procedure;

- And -

In the matter of:

Tarun Kumar Das

son of Late Santi Ranjan Das,

Proprietor of M/s Artland, residing at

EE/13/8, Salt Lake City, Sector - II,

Kolkata - 700 091, under Police

Station Bidhannagar (East), in the

District of North 24-Parganas having

its office earlier at CD-295, Salt Lake

City, Sector - I, Kolkata - 700 064 and

presently at CJ-30, Salt Lake City,

Sector - II, Kolkata - 700 091, in the

District of North 24-Parganas

..... Applicant

-Versus-

1. Amit Kumar Das

son of Late Bishnupada Das, earlier residing at EC-130, Salt Lake City, Sector - I, Kolkata - 700 064, in the District of North 24-Parganas and also of 49, Suri Lane, under Police Station Muchipara, Kolkata - 700 014

2. Smt. Sharmila Das

wife of Amit Kumar Das, earlier residing at EC-130, Salt Lake City, Sector - I, Kolkata - 700 064, in the District of North 24-Parganas and also of 49, Suri Lane, under Police Station Muchipara, Kolkata - 700 014

..... Opposite Parties

The humble application of the applicant abovenamed most respectfully

SHEWETH:

1. That your applicant filed Title Suit No. 205 of 2010 before the Learned Civil Judge, Senior Division at Barasat with prayers as below:

a) Leave under Order 2 Rule 2 of the Civil Procedure Code;

b) Declaration that the plaintiff has the right to do the construction work as per agreement dated 11.04.2002 and the power of attorney dated 11.04.2002;

c) Injunction restraining the defendant Nos. 2 and 3 from transferring their respective shares in the said suit property to the defendant No. 1;

d) Injunction restraining the defendant No. 1 from transferring the suit property or any part or portion thereof to any third person;

e) Injunction restraining the defendants from causing any obstruction or hindrance in the construction work by the plaintiff according to the agreements and power of attorney executed by the defendants in favour of the plaintiff in terms with the sanctioned building plan;

f) Injunction restraining the defendant Nos. 1, 2 and 3 from engaging or appointing any other person or persons to make construction work in the suit property excepting the plaintiff;

g) Temporary / ad-interim injunction in terms of prayers (b), (c), (d), (e) and (f) above

h) Receiver;

- i) Cost of the suit and incidentals thereto;
- j) Any other relief or reliefs to which the plaintiff is entitled in law and in equity.

Your applicant craves leave to rely upon the plaint in the said Title Suit at the time of hearing of the instant application.

2. That by and under a judgement and order dated 24.04.2012 the said Title Suit was dismissed ex-parte by the Learned Second Civil Judge (Senior Division) at Barasat, North 24-Parganas.

3. That being aggrieved by and / or dissatisfied with the said judgement and order dated 24.04.2012 in the said Title Suit No. 205 of 2010 your applicant preferred an appeal before the Learned District Judge at Barasat which was numbered as Title Appeal No. 36 of 2012.

An application for injunction under order 39 Rules 1 and 2 read with Section 151 of the Code of Civil Procedure was also preferred in connection with the said Title Appeal No. 36 of 2012.

4. That the said Title Appeal was admitted and orders passed on different dates namely 05.06.2012, 07.06.2012, 17.07.2012, 18.08.2012, 23.08.2012, 18.09.2012, 13.12.2012, 25.02.2013, 01.04.2013, 02.05.2013, 03.06.2013, 12.06.2013, 28.06.2013, 30.07.2013, 30.08.2013, 30.09.2013, 07.11.2013, 07.12.2013, 15.03.2014, 31.05.2014, 17.07.2014, 01.08.2014,

01.09.2014, 17.09.2014, 31.10.2014, 15.11.2014, 06.12.2014, 31.01.2015, 23.03.2015, 09.04.2015, 17.04.2015, 18.05.2015, 15.07.2015 and 03.08.2015.

A photostat copy of the order sheets in the Title Appeal No. 36 of 2012 are annexed hereto and collectively marked as Annexure "A".

5. That by and under order No. 19 dated 15.03.2014, the Ld. Appellate Court fixed the date of ex-parte hearing of the appeal.

Your applicant craves leave to rely upon the order fixing ex-parte hearing of the Appeal at the time of hearing of the instant application.

6. That after the order for ex-parte hearing of the Appeal, the Defendant No. 3 in the said Appeal and Opposite Party No. 1 herein preferred two applications both dated 1<sup>st</sup> September, 2014, the first praying for passing an order accepting the causes shown as bona fide and the second for vacating the ex-parte order of hearing of the Appeal by giving an opportunity to the respondent No. 3 therein to contest the said Appeal.

Be it stated further that both the said applications were preferred by the respondent No. 3 therein being the Opposite Party No. 1 herein through his purported legally constituted Attorney being his wife and Opposite Party No. 2 herein.

A photostat copy of the said two applications both dated 1<sup>st</sup> September, 2014 are annexed hereto and collectively marked as Annexure "B".

7. That the said two applications as aforementioned had been filed before the Ld. Appeal Court on the strength of a purported Power of Attorney dated 08.02.2002 executed by the Opposite Party No. 1 in favour of his wife, the Opposite Party No. 2.

A photostat copy of the said Power of Attorney dated 08.02.2002 is annexed hereto and marked as Annexure "C".

Be it stated further that Opposite Party No. 1, along with Smt. Arati Das, mother of Opposite Party No. 1 and Smt. Anjana Chanda, sister of Opposite Party No. 1, had executed a Power of Attorney dated 11.04.2002 appointing your applicant as their legally constituted attorney in regard to the suit premises at EC 130, Salt Lake City, Sector I, Calcutta 64 wherein the wife of Opposite Party No. 1 i.e. Opposite Party No. 2 had put her signature as a witness thus giving the lie to the purported Power of Attorney dated 08.02.2002.

A photostat copy of the said Power of Attorney dated 11.04.2002 is annexed hereto and marked as Annexure "D".

8. That your applicant thereupon preferred a written objection to the said applications submitted on behalf of the respondent No. 3 therein being the Opposite Party No. 1 herein.

A photostat copy of the said written objection is annexed hereto and marked as Annexure "E".

9. That by and under an order dated about 31.01.2015, the Ld. Appeal Court granted liberty to the respondent No. 3 to file an affidavit-in-opposition to the written objection and thereupon an affidavit-in-opposition dated 23.03.2015 was filed before the Ld. Appeal Court.

A photostat copy of the said affidavit-in-opposition is annexed hereto and marked as Annexure "F".

10. That the Ld. Appeal Court heard the matter on or about 09.04.2015 and thereafter by and under order No. 32 dated 17.04.2015 passed orders rejecting the two applications filed by the respondent No. 3 therein, the Opposite Party No. 1 herein, through his wife, the Opposite Party No. 2 herein.

The reasons put forth by the Ld. Judge was inter alia that a Power of Attorney dated 08.02.2002 on the basis of which the wife of the respondent No. 3 therein intended to contest the Appeal had no legal force.

A photostat copy of the said order No. 32 dated 17.04.2015 passed by the Ld. Additional District Judge, Third Court, Barasat is annexed hereto and marked as Annexure "G".

11. That the Opposite Party No. 1 and the Opposite Party No. 2 have made false statements on oath inter alia as follows:

- i) that the residential address of Opposite Party No. 1 and Opposite Party No. 2 is shown as EC-130, Salt Lake City, Sector

- I, Kolkata - 700 064 wherein the building which exists is not in habitable condition.

ii) that they had no knowledge of the suit / appeal despite the fact that notices had been sent, newspaper publications had been made

iii) that in the two applications for showing cause / vacating the order of ex parte hearing of the appeal the respondent No. 3 therein has stated about "reliable source" but no mention of the said reliable source

iv) in the power of attorney dated 11.04.2002 the signature of Opposite Party No. 1 is different from that in the other documents

v) the power of attorney dated 08.02.2002 has been stated to be genuine and it has also been stated that it has been revoked but there is no notice of revocation

vi) there are grave anomalies in the statements made in the said two applications dated 01.09.2014 and the objection dated 23.03.2015.

12. That by virtue of the false statements made on oath by both the Opposite Party No. 1 and Opposite Party No. 2 before the Ld. Appeal Court as also by filing a manufactured document being the Power of Attorney dated

08.02.2002 the said Opposite Parties have become liable for prosecution under inter alia the provisions of Section 177, 182, 187, 191, 192, 196, 199, 200, 209 of the Indian Penal Code.

13. That a specific procedure is laid down under Section 195 read with Section 340 of the Code of Criminal Procedure, 1973 for launching of prosecution for the offences committed by the opposite parties which offences are against the administration of justice and hence the instant application is being made praying for making a complaint in writing by this Ld. Court for initiating proceedings against the opposite parties before the Ld. Magistrate under the provisions of the Code of Criminal Procedure.

14. That the offences committed by the opposite parties inter alia attract the provisions of Sections 177, 182, 187, 191, 192, 196, 199, 200, 209 of the Indian Penal Code.

15. That since false statements have been made on oath by the opposite parties, which go to the root of the matter, it would be in the fitness of things that the instant application be adjudicated first as expeditiously as may commence to this learned court and pending disposal of the instant application further proceedings be stayed in the pending title appeal being Title Appeal No. 36 of 2012.

16. That the applicant shall be seriously prejudiced unless this Ld. Court is pleased to pass orders as prayed for herein.

17. That the instant application is made bona fide and for the ends of justice.

In the circumstances stated above your applicant most humbly prays that your Honour would be graciously pleased to pass an order in taking cognizance of the offences committed by the opposite parties and to file a criminal complaint in terms of Section 195 read with Section 340 of the Code of Criminal Procedure against the said Opposite Parties for the aforesaid offences in a Criminal Court of competent jurisdiction and / or to refer the matter to the Registrar, Vigilance Department, High Court, Calcutta and pending disposal of the instant application further proceedings be stayed in the pending title appeal being Title Appeal No. 36 of 2012 and / or to pass such other or further order or orders as to Your Lordships may seem fit and proper.

And your applicant as in duty bound, shall ever pray.

AFFIDAVIT

I, Tarun Kumar Das, son of Late Santi Ranjan Das, aged about 59 years, by faith Hindu, by occupation business, residing at EE/13/8, Salt Lake City, Sector - II, Kolkata - 700 091, under Police Station Bidhannagar (East), in the District of North 24-Parganas, do hereby solemnly affirm and say as follows:

1. That I am the applicant in the instant application and as such I am well acquainted with the facts and circumstances of the case; I am competent to swear and affirm the instant affidavit.

2. That the statements made in paragraphs 1 to 15 are true to my knowledge derived from the records of the case and / or my learned advocates which I verily believe to be true and the rest are my respectful submissions before this Ld. Court.

Prepared in my office

*Sd/-*

Advocate.

*Sd/-*  
The Deponent is known to me

*Sd/-*

Advocate.

Solemnly affirmed before me on this the *03<sup>rd</sup>* day of *August*, 2015



43  
K1152  
9/5 4.5/11

37 A D J  
K1167  
K222  
2-1/11  
Plung 7-11  
28

T.A. No. 36 of 2012  
Present : Sri N.K. Ghosal

Order No.1

Dtd. 5.6.2012 This is an appeal filed by the appellant against the Judgment passed on 24.04.2012 by Ld. 2nd. Court of Civil Judge (Senior Division) at Barasat in T.S. No.205 of 2010.

- Court fees paid is correct. Appeal filed within time. *Let the T.A. be admitted.*
- Register the case as Title Appeal.
- From the official note it appears that no caveat is pending.
- Issue notice upon the respondents by both ways.
- To 17.7.2012 for S.R.A.D.

*Both ways  
3/5/12  
11/6/12*

The appellant whose prayer was discarded by the Ld. Lower court has preferred this appeal challenging the legitimacy of the order. In the grounds of appeal it is pleaded that the order passed by Ld. Civil Judge (Senior Division) 2nd Court at Barasat was made from a wrong perception.

An application under Order 39 Rules 1 & 2 read with Section 151 of C.P.C. is filed praying for an order of temporary injunction so that the respondents do not transfer the respective share in the suit property to any third party.

Heard. Perused the Judgment of the Ld. Lower court dated 24.4.2012 wherefrom it is clear that despite service of notice upon the defendants they did not appear to contest the case and that is why the suit was heard ex-parte but virtually it was dismissed. Upon analysis of the situation there cannot be any least doubt that if the prayer for ad-interim injunction is discarded the sole object of appeal will be completely frustrated. Moreso, if an ex-parte order in terms of the prayer of the appellant is granted no substantial harm will be caused to the respondents. So in the circumstances, I think that ad-interim order can be granted restraining the respondents from transferring their respective shares in the suit property to any third party.

Hence it is,

Ordered.

That the prayer of the appellant for ad-interim injunction is allowed.

The respondents are hereby restrained by an order of ad-interim injunction from transferring their respective shares in the suit property to any third party. The interim order will remain in force till the next date.

The appellant to comply the provision as laid down under Order 39 Rule 3(a) & (b) C.P.C. as per law.

*ISSN  
3/6/12*

Issue notice calling upon the respondents asking them to show cause within 10 days from the date of receipt thereof as to why the appellant's prayer for temporary injunction shall not be granted.

Requisites by both ways at once. Appellant to file postal receipt by the date fixed.

To-date, i.e., 17.7.2012 for S.R.A.D.

*[Signature]*  
District Judge, North 24 Pgs.

Checked by

ND. 2  
7/6/12

The appellant files an affidavit along with PRs showing the compliance of the earlier orders. Let it be kept with the CR.

The appellant also files two separate petitions along with requisites and process fees praying for issuance of the summons urgently and acceptance of the same on the ground stated therein the prayers are considered and allowed. Issue the same as prayed for. Today i.e. 17.7.12.

*[Handwritten signature]*

Order No. 3  
17/07/12

The appellant files herein. A/D cards upon the respondents NO-1 and 2 have been returned having been duly signed by the respondents and the services of summons are left off. The respondent NO-1 appears by filing Vakalatnam through Sr. Adv and files w/o No. 39 rule 15 and 2 w/o the section 151 of CrP supported by an affidavit and the copy is handed upon the appellant and let the same be kept with the CR. The appellant files a petition supported by an affidavit praying for extension of the order of ad-interim injunction as passed by the H. Court previously. The interim stay upon the judgment and decree in T.S NO-205 of 2010 is hereby extended till the next date. No A/D card for respondent NO-3.

Fix 18/08/2012 for A/D card for respondent NO-3. SR. Adv and w/o if any in other respondent.

*[Handwritten signature]*

*[Handwritten signature]*

Checked by

04  
 18/08/12

The appellant and the respondents file their respective affidavits through their respective advocates.  
 The appellant also files a petition supported by an affidavit praying for extension of the order of ad-interim injunction as passed by the L.D. Court previously -  
 The respondents No-1 and 2 do not appear -  
 The interim stay upon the judgment and decree in T.S No 205 of 2010 is hereby extended till the next date.  
 No. A.D. Call for the respondent No-3.  
 Let the instant T.A. be transferred to the Court of L.D.J. 3rd Court at Barasat for disposal fixing 18/09/12 for app. before the L.D. District Judge Court with a request to call for L.C.R. from the Court below from which sent and also with a direction to the appellant to take fresh stay upon the respondent No-3 before the L.D. District Judge Court.  
 T.C.M.

D.J.

D.J.

5  
 23.8.12

Present: Sri Pradyo Kumar Panigrahy

Recd. & returned from District  
 Registrar  
 to it for return

Additional District Judge  
 3rd Court, Barasat  
 North 24 Perganas.

6  
 18/9/12

Both sides have been  
 notified by the District Registrar  
 Supporting by an affidavit in praying  
 for extension of interim stay upon the judgment  
 and decree and also for extension of L.C.R. stay  
 upon the judgment and decree in T.S. No. 205 of 2010.  
 The copy of the affidavit is on file of the  
 District Registrar. The copy of the affidavit is  
 also on file of the District Judge. The  
 stay upon the judgment and decree in T.S. No. 205 of 2010 is hereby extended till the  
 next date.  
 T.C.M.

Additional District Judge  
 3rd Court, Barasat



T.A - 36/12

10  
2/5/13

Applicant filed a Petition  
Respondent Avale do file with  
K. K. K. K. on behalf of the  
file revision of formal report with  
finally regarding interim result from  
positional before it in the report with the  
revised.

Applicant is also file a Petition supported  
by an affidavit praying for extension of the  
interim Order. Prasad. Conund.

The interim order is extended till the  
next date. To 03/08/13 for appeal and reply to  
and reply upon reply no. 3. Submitted by K.C.K.

PKP

11  
02/08/13

Applicant as well as Respondent  
are also file to give.

Applicant is also file a Petition supported  
by an affidavit praying for extension of the  
interim order. Prasad. Conund. Prasad. Conund.  
Judge's case.

The interim order is extended till the  
next date. To 30/07/13 for appeal and reply to  
an reply upon Respondent no. 3. Submitted by K.C.K.  
no. 3. Submitted regarding R.C.K.

Callender  
No. 293.  
d. 15.6.13

12  
12/6/13

Applicant file a Petition  
Prasad with a Petition supported by an  
affidavit up to 5. Prasad Prasad  
Such. 15/07/13. Copy submitted  
is not. Let it be kept with the  
Prasad. Submitted regarding R.C.K.

PKP

Checked by

T.A. 34/12

28/6/13

Put up 724 Fee dated 12/6/13 is taken up for order. The fee is around.

Her. Consider the Submission made by the Ad. Advertiser for the first time cannot be allowed as no order was in ordinary way.

In view of this, the applicant is directed to cause issue of notice order in compliance by an advertiser in a daily news paper circulating in the locality, in which the respondent is last known to have actually and voluntarily resided, carried on business, or personally worked for gain. File No. 20/07/13 for copy of the order as a file of draft copy of circulation or advertisement in news paper. Discharge order -

PKP

PKP

14/12/02

Applicant is sought and file of copies in duplicate. Let it be approved and handed over to the Justice on proper receipt of Public File 30-08-13 for file news paper.

Applicant is well as respondent by file Razim. Applicant is also file a petition supported by an affidavit praying for issue of an interim order. The interim order is extended till the date of final order (20/08/13).

15/20/02/13

Applicant file Razim. Applicant is also file a petition supported by an affidavit praying for issue of an interim order. The interim order is extended till the date of final order. File No. 20/09/13 for final order.

Checked by