

**In the High Court at Calcutta  
Civil Appellate Jurisdiction  
Appellate Side**

**Before:**  
**The Hon'ble Justice Subrata Talukdar**  
**and**  
**The Hon'ble Justice Lapita Banerji**

**FMA 623 of 2022  
With  
CAN 1 of 2022  
And  
CAN 2 of 2022  
Zeniak Innovation India Limited &Anr.  
Vs.  
State of West Bengal & Ors.**

For the Appellants : Mr. Sayantan Basu, Adv.  
Mr. Tanmoy Roy, Adv.  
Ms. Tonoya Ghosh, Adv.

For the Respondent no.4-in-person : Mr. Kanishk Sinha, Adv.

For the State : Mr. Amal Kr. Sen, Ld. Additional  
Government Pleader.  
  
Mr. Lal Mohan Basu, Adv.

Hearing concluded on : 09.02.2023.

Judgment on : 02.03.2023.

**Lapita Banerji, J.:-** The appellants/applicants claim to be manufacturers of e-rickshaws and registered with the respondents and in particular the Respondent nos.1, 2 and 3. The appellants/applicants carry on the business of manufacturing, distributing, supplying and marketing of e-rickshaws fitted with lead acid ordinary batteries.

2. By an Order dated February 24, 2020 (Impugned Order) passed in T.S. No.27/2018, the Additional District Judge, XIIIth Court at Alipore restrained the defendants in the suit/respondent Nos.1 to 3 herein from infringing the plaintiff's patent and from registering battery operated eco-friendly e-rickshaw till disposal of the suit. Being aggrieved by the said order the appellants/applicants have filed the instant Appeal being FMA 623 of 2022.

3. T.S. No.27 of 2018 was filed by the plaintiff/proforma respondent No.4 (in the present appeal) against the Principal Secretaries of various State Governments, in particular against the Principal Secretary of the State of West Bengal along with the Secretary/Joint Secretary of the Ministry of Road Transport and Highways, Government of India (Respondent nos. 1 to 3). The plaintiff's case, in short, in T.S. No.27 of 2018 is that he is the Managing Director of one Jasper Motors Private Limited and the holder of a patent for "battery mounted" eco-friendly vehicles. The Principal Secretaries of the State Governments by allowing registration of E-Rickshaws by other manufacturers have aided in the violation of the orders passed by the Hon'ble High Court in a previous suit being C.S 388 of 2014.

4. The said patent was granted to the plaintiff on December 28, 2012 with effect from May 2, 2005 (being the date of application under the Patents Act, 1970).

5. In or around 2014 the plaintiff/Jasper Motors Private Limited filed a suit for infringement being C.S. No.388 of 2014 before The Hon'ble High Court at Calcutta against the proprietor of one Basanti Battery Operated Rickshaw and

others. By an Order dated June 17, 2015, The Hon'ble Court taking up interlocutory matters directed -

*"The said respondents are restrained from infringing the plaintiff's patent in relation to eco-friendly vehicles."*

6. By an Order dated August 27, 2018, the said Order of 2015 was modified. The Hon'ble Court taking up interlocutory orders directed that quarterly statements of accounts for the period commencing from August till November, 2018 to be filed by the defendant No.2/DYS Impex Private Limited in C.S. No.388 of 2014 by December 10, 2018. Subsequently, quarterly statements within 10<sup>th</sup> of the month, which fell due, was to be maintained. Since the defendant No.2 in the High Court Suit failed to comply with the previous directions of the Court, the Interim Order in favour of the plaintiff was directed to continue till compliance of the Order dated August 27, 2018.

7. Several of the manufacturers of E-Rickshaws made applications for being added as parties before the High Court in C.S. No. 388 of 2014. After being added as parties, they filed applications for vacation or variation of the Orders passed on June 17, 2015, July 18, 2018 and August 27, 2018. The newly added defendants argued that without adjudication of their rights, the plaintiffs have sent communication to the third parties affecting their rights and the newly added defendants/applicants/manufacturers were being bound by Orders where their rights have not been adjudicated. The Interlocutory Court was of the view that it could not be contended by the plaintiffs that the aforesaid Orders of Interim Injunction were binding on the newly added

defendants. Therefore, the aforesaid Orders were vacated vis-a-vis the newly added defendants/manufacturers.

8. Despite a new application for injunction filed against the newly added defendants, by the Plaintiff/proforma Respondent No.4 no interim order was passed against them till date in the High Court suit. The Respondent No.4/Plaintiff claimed in T.S. 27 of 2018 that despite several Orders passed in the High Court suit and various writ petitions, the State of West Bengal along with other State Governments have been violating Orders of the Hon'ble High Court in C.S. No. 388 of 2014 along with the interlocutory applications filed therein.

9. It is the plaintiff's case that since the various State Governments and particularly, the Government of West Bengal have been allegedly flouting the Orders passed by the Hon'ble High Court at Calcutta, the plaintiff was constrained to file the instant suit being T.S. No.27 of 2018, inter alia, claiming the following reliefs:

- a) *That an account be taken from the defendant to deliver to the plaintiff all the products that may be registered by the defendant;*
- b) *An Order upon the defendant to deliver to the plaintiffs all the products of the defendant that may be registered;*
- c) *Permanent and mandatory injunction restraining the defendants, their agents and servants from continuing or repeating any such infringement of the plaintiffs' patent and from doing any act to infringe or injure the said patent and to stop the registration of battery operated eco-friendly e-rickshaws.*

10. The appellants/applicants claim that since they were not parties to the suit in C.S. No.388 of 2014, the Orders of Injunction were not binding upon them. Therefore, the **Impugned Order** of injunction could not be passed in T.S 27 of 2018 restraining the State Government from registering the e-rickshaws of the appellants/applicants pursuant to any orders of injunction passed in the High Court suit being C.S. No.388 of 2014. The applicants are also not parties to the Alipore Court suit being T.S. No.27 of 2018 from which the instant FMA 623 of 2022 has arisen. The applicants are involved in the business of manufacturing and marketing of e-rickshaw with lead acid ordinary batteries and are not manufacturers/suppliers of e-rickshaws with fuel/cell (battery) that is mounted on the vehicles. Therefore, there is no infringement of the “*patent*” given in favour of the plaintiff/proforma respondent No.4. Therefore, the **Impugned Order** passed against the respondent Nos.1 to 3 restraining them from registering any battery operated eco-friendly e-rickshaws could not have been passed being a blanket order of injunction against all manufacturers/suppliers of e-rickshaws.

11. The State of West Bengal could not have been enjoined from registering the e-rickshaws of manufacturers who were neither parties to the suit in C.S. No.388 of 2014 nor parties to the suit in T.S. No.27 of 2018.

12. The effect of the **Impugned Order** is felt by the bonafide manufacturers and suppliers of e-rickshaws who have not infringed the rights of the plaintiff in any manner whatsoever and were permitted to ply their vehicles upon due

registration with the Transport Authorities till the **“Impugned Order”** of Injunction dated February 24, 2020.

13. In CAN 1 of 2022 the appellants/applicants have prayed for stay of the **“Impugned Orders”** dated February 24, 2020; December 5, 2020 and March 3, 2021 being parties aggrieved by the **Impugned Orders**.

14. Mr. Basu, Learned Counsel appearing on behalf of the appellants/applicants, submits that without the applicants being made parties to the suit, the plaintiff in T.S. No.27 of 2018 has obtained Orders of Injunction violating the rights of the applicants/appellants. Such a blanket Order of Injunction has been obtained by suppressing material facts and Orders passed in the High Court suit being C.S. No.388 of 2014. It was not brought to the notice of the Alipore Court that Orders passed in C.S. No.388 of 2014 were only restricted to the original defendants and were neither applicable to the newly added defendants nor the manufacturers who were not parties to the suit.

15. The said application for stay being CAN 1 of 2022 was filed on April 26, 2022.

16. Thereafter, the appellants/applicants filed an application under Section 96 read with Section 151 of the Code of Civil Procedure, 1908 (CPC) being CAN 2 of 2022 on May 17, 2022 for grant of leave to the applicants to prefer an appeal against the **“Impugned Order”** dated February 24, 2020 in T.S. No.27 of 2018 as the applicants were not parties to the suit. Mr. Basu submits that even though the cause title of the application being CAN 2 of 2022 indicates that the same is an application under Section 96 of CPC, the said application

was made for leave to appeal under inherent powers of the Court. Section 96 of the CPC is resorted to after final decree is passed in a suit and a person who is aggrieved by the said decree but not a party to the suit prays for leave.

17. Mr. Basu, relies on a Judgment reported in AIR 1985 Cal (**United Commercial Bank vs. Hanuman Synthetics Ltd & Ors.**). He submits that there is no bar in the CPC against filing of appeal in a case where a person is seriously prejudiced by an order even though he was not made a party to the proceedings in which the Order was passed. He relies on paragraphs 11, 12, 14 and 16 of the said Judgment.

18. From a conjoint reading of the aforesaid paragraphs, it clearly appears that in case of a party to a suit there is a right of Appeal but in case of a person, who is not a party to the suit but is affected by the order, he has no right to appeal but the Court of Appeal may in its discretion allow him to prefer an Appeal. Lindley L.J. observed in **Security Insurance Company** reported in (1894) 2 CH 412 that if the person, who alleges himself to be aggrieved by an order, can make out even a prima facie case as to why leave should be granted, he will be given the leave to appeal *“but without leave he is not entitled to appeal”*.

19. Mr. Basu, relies on a Judgment reported in (1970) 3 SCC 573 [**Smt. Jatan Kumar Golcha vs. Golcha Properties (P) Ltd**]. In that case, an appeal was preferred since the Company Judge directed sale of the leasehold rights of the Golcha Properties (P) Ltd (in liquidation) in a piece of land belonging to the appellant. When the company went into liquidation, the Company Judge

without hearing anyone or issuing a notice to the appellant, ordered auctioning of the leasehold rights of the land and structures constructed thereon pursuant to the proposal of the Official Liquidator. It was decided by the High Court relying upon Rule 139 of the Companies (Court) Rules, 1959 that since the appellant did not appear before the Company Judge, she was not entitled to maintain the appeal. The High Court was of the view that the only remedy that the appellant had was by way of filing of a suit after obtaining leave of the Company Judge under Section 446 of the Act even though, admittedly no notice was sent to the appellant either by the Official Liquidator or by the Company Judge. The Apex Court was of the view that the High Court and the Official Liquidator attached thereto were bound by Rule 130 of the 1959 Rules as well as rules of Natural Justice. The default was on their part for not following the correct procedure and, therefore, the Appellant could not be deprived of her right to get her grievance redressed by filing an appeal against the order which has been made in her absence and without her knowledge.

20. Mr. Sinha, appearing in person on behalf of the plaintiff/ respondent No. 4, submits that the appeal being FMA 623 of 2022 could not have been filed without leave being granted by this Hon'ble Court since the appellants/applicants were not parties to the Alipore Court suit being T.S. No.27 of 2018. He submits that no leave could be prayed for/or given under Section 96 of the CPC since a decree has not yet been passed in T.S. No.27 of 2018. An appeal from an Interim Order of Injunction could not be preferred by a person who is not a party to the suit, by praying for leave under Section 96 of

the CPC. It is only after the point of demurrer has been urged by the respondent No.4 that CAN 2 of 2022 has been filed by the appellants/applicants. The appellants/applicants could not negate the plaintiff's/respondent No.4's objection with regard to the maintainability of the Appeal by subsequently praying for leave to appeal in CAN 2 of 2022 that too under Section 96 of the CPC.

21. He contends that before admission of the Appeal, the appellants/applicants have sought to file their appeal as FMA 623 of 2022 instead of filing the same with FMAT number. Such a course is not permissible under the Appellate Side Rules of this Hon'ble Court.

22. Mr. Sinha, further argues that without getting the application under Order 1 Rule 10 of the Code of Civil Procedure heard before the Trial Court, the appellants/applicants have sought to file an application for leave to prefer an appeal being CAN 2 of 2022 in connection with an application for stay being CAN 1 of 2022.

23. Mr. Sen, Learned Additional Government Pleader, appearing for Respondents No. 1 to 3 submits that if an interlocutory order is akin to a final decree adjudicating the rights of the parties, then, leave to appeal can be prayed for by the person being affected by the said interlocutory order under Section 96 of the Code of Civil Procedure. He submits that though Section 96 relates to appeal from original decree, it can be interpreted to mean appeal from original orders. He submits that no action under Section 48 of the Patents Act, 1970 could be maintained by the plaintiff/respondent

No.4 under the Patents Act against the State of West Bengal. The registration of the battery fitted e-rickshaws is governed by the provisions of Sections 40 and 41 of the Motor Vehicles Act, 1988 and not by the Patents Act, 1970. Since the Government of West Bengal has complied with the provisions of the Motor Vehicles Act, no order of injunction could have been passed against the State of West Bengal.

24. Having considered the rival submissions of the parties and the materials placed on record, this Court finds:

- (a) The appellants/applicants filed an application under Order 1 Rule 10 to be added as party in T.S. No.27 of 2018 on or before June 3, 2022. When the application came up for hearing on July 25, 2022 and July 29, 2022, no one moved the said application for addition of parties before the Trial Court.
- (b) In fact, it was submitted before the Trial Court that a “final order” is being awaited from the Hon’ble High Court at Calcutta.
- (c) By referring to the Order dated July 25, 2022, Mr. Basu appearing for the applicants, sought to submit that the final order that the applicants referred to, was an Order dated March 10, 2022 relating to FMAT 435 of 2020 in connection with the **Impugned Order** dated February 24, 2020.

- (d) The said submission cannot be accepted by this Court since it has been recorded by the Trial Court that by the Order dated March 10, 2022, the Hon'ble High Court was pleased to dismiss the Appeal being FMAT 435 of 2020 since the same was not pressed by the parties concerned. The dismissal of FMAT 435 of 2020 was brought to the notice of the Trial Court by the plaintiff/respondent No. 4 herein. Under no stretch of imagination can it be accepted that the appellants referred to the orders to be passed in FMAT 435 of 2020 and not the orders to be passed in FMA 623 of 2022 as the 'Final Order' before the Trial Court.
- (e) Therefore, the said submission of the plaintiff cannot be misinterpreted to be the submissions made by or on behalf of the appellants/applicants who it appears to have submitted that a "Final Order" from the Hon'ble High Court at Calcutta was being awaited. It has not been contended by the applicants that there was any wrong recording in the orders passed by the Trial Court. Therefore, the facts/submissions that appear from the face of the records are accepted by this Bench.
- (f) Again on October 28, 2022 it was recorded by the Trial Court since "Final Order" from the Hon'ble High Court was being awaited, the matter was adjourned till January 2, 2023.

- (g) Yet, again on January 2, 2023 it has been recorded that no one moved the application for addition of parties for and on behalf of the appellants/applicants and the application was adjourned again till March 17, 2023 awaiting “Final Order” from the Hon’ble High Court at Calcutta.
- (h) Other parties like Exide Industries, Mahindra & Mahindra were added as parties to the Alipore Court suit being T.S. 27 of 2018.
- (i) It appears from the recordings made by the Trial Court that despite filing an application for addition of parties, the appellants/applicants did not move the same and prayed for time on several occasions for producing “Final Order” passed by the Hon’ble High Court.
- (j) The conduct of the appellants/applicants gives a distinct impression that it was a conscious decision not to move the application for addition of parties since once added as parties to the suit, the appellants/applicants would have a right to file an application for discharge and/or setting aside and/or variation of the Interim Order under Order 39 Rule 4 of the CPC.
- (k) It appears that the appellants/applicants did not want to avail of that course of action at the first instance and have

preferred an appeal before this Hon'ble Court and contended that since they were not parties to the Alipore Court suit being T.S. 27 of 2018 and their rights were being affected by the Order of injunction, leave to Appeal should be granted to them. Upon being granted leave to Appeal, the Interim Order of Injunction dated February 24, 2020 restraining the respondent Nos. 1 to 3 from registering the E-rickshaws should be stayed.

- (l) Such a course of action is not appreciated by this Hon'ble Court and if allowed, would tantamount to allowing "forum shopping" by the applicants.
- (m) Furthermore, this Court is of the view that without being granted leave to Appeal, the Appeal being FMA 623 of 2022 could not have been filed by the appellants/applicants.
- (n) In **Hanuman Synthetics** (Supra) and also in the Judgments relied on in the said decision, it has been reiterated again and again that an Appeal can be filed by a person, who is not a party to the suit, only with the leave of the Appeal Court. Here, admittedly the Appeal has been preferred and a stay petition being CAN 1 of 2022 filed by the appellants/applicants without the leave of the court. Upon the point of maintainability being urged by the respondent No. 4/plaintiff, the applicants/appellants have sought to file

an application being CAN 2 of 2022 praying for leave from this Court. Such a course of action is not permissible in law. Only upon leave being granted by the Court of Appeal could the Appeal be taken on board and a stay petition be filed.

- (o) In **Golcha Properties** (Supra) also, it has been reiterated that a person, who is not a party to the suit, may prefer an appeal with leave of the Appellate Court. However, the decision in the **Golcha Properties** (supra) cannot be equated with the facts of the present case. In the present case, the appellant has not prayed for leave to appeal before seeking to file the appeal and move the stay petition. Furthermore, the appellants/applicants have filed an application for addition of parties under Order 1 Rule 10 of the CPC and failed to move it/deliberately chose not to move on various occasions on the ground that they were awaiting final order/judgment from the Appeal Court.
- (p) Upon the point of demurrer being taken by the respondent No.4/plaintiff, the appellants filed CAN 2 of 2022 praying for leave under Section 96 of the CPC. The appellants/applicants should not be allowed to negate the issue of maintainability after the same being raised/urged by the plaintiff/respondent No.4.

- (q) There was no legal impediment in filing CAN 1 of 2022, an application for stay without availing of the course laid down in the CPC by way of Order 1 Rule 10 and Order 39 Rule 4, but the same could not have been filed prior to the prayers made in CAN 2 of 2022 were allowed by this Court.

25. In the light of the discussions above, this Court is of the view that an appropriate course of action would be to pursue the application already made under Order 1 Rule 10 of CPC before the Trial Court in T.S. 27 of 2018.

26. Therefore, **CAN 1 of 2022** along with **CAN 2 of 2022** along with **FMA 623 of 2022** are **dismissed**.

27. All parties to act on the downloaded server copy of this order from the website.

28. Urgent certified photocopy of this judgment, if applied for, be supplied to the parties upon compliance of all the requisite formalities.

**I Agree.**

**(Subrata Talukdar, J.)**

**(Lapita Banerji, J.)**