

26th March,
2025
AK/TN
23

F.M.A.T 1 of 2025
IA No: CAN 1 of 2025
CAN 2 of 2025
CAN 3 of 2025

Pawan Ghai
Vs.
Punit Ghai

Mr. Chayan Gupta
Mr. S. Kundu

...for the appellant.

Mr. Soumabho Ghose
Mr. Ankur Singhi
Mr. Ayant Shaw

...for the respondent.

1. Learned counsel for the appellant, in support of the application for condonation of delay, submits that the appellant was all along under the impression that the status quo order which is sought to be impugned in the present appeal was passed only qua the shop room of the respondent.
2. It is submitted that from the ground floor of the suit premises, both the appellant and the respondent are carrying on their respective businesses from different shop rooms.
3. Such impression, it is argued, was further strengthened by a notice dated December 10, 2024 issued by the learned Advocate for the respondent after the passing of the impugned order, wherein it

was alleged that by putting up and/or installing a leader board and/or store front signage in the name of 'Mojo Fashions', an act of contempt was about to be committed by the appellant.

4. As such, upon learning from the said letter the construction sought to be given by the respondent to the impugned order, the appellant was advised to prefer this appeal, since the letter prompted the appellant to be aggrieved by the said order for the first time, apprehending threat to the appellant's possession and enjoyment of his own shop room.
5. Learned counsel appearing for the respondent controverts such contentions and submits that the plaint schedule and the schedule of the injunction application in the trial court made it abundantly clear that the suit property, which was the subject-matter of the status quo order, comprised of the entire ground floor, including both the alleged shop rooms.
6. As such, there could not have been any iota of doubt in the mind of the appellant as regards the property in respect of which such status quo order was passed.
7. Thus, nothing happened after the passing of the order of the status quo to alter the perception of the appellant on such count.

8. As such, it is argued that no ground or plausible reason for the delay in preferring the appeal has been made out.
9. We find from the schedule to the plaint and the injunction application that undoubtedly the respondent is justified in contending that it was open to the appellant to understand that the subject-matter of the suit property, in respect of which status quo was granted both at the *ad interim* and the temporary injunction stage, comprised of the entire ground floor, including the alleged shop room of the appellant as well.
10. However, it is the perception of the parties which matters here.
11. It might have been reasonably perceived by the appellant, from the conduct of the respondent in construing the *ad interim*, and thereafter the temporary, order of status quo, that the status quo operated in respect of the respective possession of the parties regarding their individual shop rooms.
12. In fact, from the impugned order, we find that although only the case of the plaintiff has been discussed (since there was no written objection filed by the defendant/appellant), the ordering portion merely directs the parties to maintain status quo as regards possession, nature and character of the

suit premises till disposal of the suit, without categorically spelling out as to which portion of the premises was in occupation of which of the parties.

13. In fact, a misapprehension in that regard might also have arisen since both parties were directed to maintain status quo not only regarding the nature and character of the suit premises but also the possession thereof, since if the defendant was construed by the learned trial Judge not to be in possession at all, there would not be any occasion to bind the plaintiff as well by an order of statusquo in respect of possession of the suit property.
14. The said misapprehension might have been further strengthened by the application filed under Order XXXIX Rule 2A of the Code of Civil Procedure by the respondent for alleged violation of the *ad interim* order of status quo, which was in the same tune as the final order. In the said application, the allegation of violation was restricted to the appellant allegedly putting up CCTV cameras within the premises and affixing a padlock on the “common entrance” of the suit property.
15. Thus, even in the said application, there was no specific allegation that by using the shop room purportedly in possession of the

defendant/appellant, any contempt of the *ad interim* order of status quo was being committed.

16. Also, in the letter dated December 10, 2024, it was alleged merely that by putting up a signage in front of the shop room apparently in occupation of the appellant, a contumacious act was being committed by the appellant.
17. Even in the said letter, no specific allegation was made that the appellant was in contempt of the status quo order by using and conducting business from his own shop room.
18. Hence, from the conduct of the respondent, there might have been a reasonable apprehension in the mind of the appellant that the appellant was not aggrieved by the status quo order, since the parties were directed only to maintain status quo in respect of their respective possessions of their shop rooms situated in the suit property.
19. Hence, we find that a plausible reason for the delay in preferring the appeal has been made out in the application.
20. In the absence of any *mala fides* as such which can be attributed to the appellant, it is trite law that a lenient view is to be taken in deciding applications for condonation of delay where sufficient reasons for the delay have been shown.

21. In such view of the matter, CAN 1 of 2025 is allowed, thereby condoning the delay in preferring FMAT 1 of 2025.
22. There will be no order as to costs.
23. However, we make it clear that since no affidavits have been directed to be filed, it is deemed that none of the allegations made in CAN 1 of 2025 have been admitted by the respondent.
24. The appeal is now taken up for hearing under Order XLI Rule 11 of the Code of Civil Procedure.
25. Heard learned counsel for the appellant.
26. We find no deficiency and/or illegality in the impugned order.
27. The plinth of the arguments of the appellant are centered around the appellant not having an opportunity to place its case before the trial court by filing of a written objection to the injunction application. However, we find from the impugned order that the matter was already fixed for filing of written objection on the date of the impugned order and on repeated calls, the defendant/appellant was not present, nor did anybody appear on behalf of the appellant.
28. We also come to know from the submissions of learned counsel for both the parties that a previous

opportunity had also been given to the appellant to file a written objection.

29. Having missed such opportunity twice, a new window cannot be opened before the appellate court permitting the appellant to file a written objection to the injunction application, thereby filling up his own lacuna. There has to be an end to litigation at some stage and in absence of any patent illegality or other legal or factual error in the impugned order and the same being passed on the basis of the pleadings available before the learned Trial Judge, we are not inclined to interfere with the impugned order.
30. Accordingly, FMAT 1 of 2025 is dismissed under Order XLI Rule 11 of the Code of Civil Procedure. Consequentially, CAN 2 of 2025 and CAN 3 of 2025 are also dismissed.
31. However, it is made clear that nothing in this order and/or the order impugned herein shall prevent the appellant, if otherwise entitled, from taking out an application under Order XXXIX Rule 4 of the Code of Civil Procedure, subject to satisfaction of the yardsticks stipulated in the second proviso thereto. If such an application is filed, the learned Trial Judge shall give an opportunity to both the parties to address the same and file their pleadings in

respect thereof and decide the same independently of the present dismissal.

32. It is further clarified that none of the observations made herein and/or in the impugned order shall be treated to be conclusive at the time of final hearing of the suit.
33. There will be no order as to costs.

(Sabyasachi Bhattacharyya, J.)

(Uday Kumar, J.)