

Form No. J(2)

In the High Court at Calcutta
Civil Appellate Jurisdiction
Appellate Side

Present: The Hon'ble Justice Sabyasachi Bhattacharyya
And
The Hon'ble Justice Uday Kumar

FMAT 49 of 2025
IA No: CAN 1 of 2025
CAN 2 of 2025

M/s. Noble Estates and others
Vs.
Anjan Shaw and another

With

FMAT 50 of 2025
IA No: CAN 1 of 2025

M/s. Noble Estates and others
Vs.
Anjan Shaw and another

With

FMAT 51 of 2025
IA No: CAN 1 of 2025

M/s. Noble Estates and others
Vs.
Anjan Shaw and another

With

FMAT 52 of 2025

M/s. Noble Estates and others
Vs.
Anjan Shaw and another

For the appellants : Mr. Satadup Bhattacharyya,
Mr. Saptarshi Datta,
Ms. Sriparna Mitra,
Ms. Srinjita Ghosh,
Mr. Pourush Kanti Pal,
Mr. Debdut Hore

For the respondents : Mr. Souma Subhra Roy,
Mr. Amarnath Agarwal,
Ms. Neelam Kumari,
Ms. Monalisa Singha

Heard on : 10.03.2025

Judgment on : 10.03.2025

Sabyasachi Bhattacharyya, J.:-

In re: CAN 2 of 2025 in FMAT 49 of 2025

1. All the appeals and the connected applications are taken up for hearing, since they arise from the same suit, respectively against the initial order of ad interim injunction granted in the suit and from the subsequent orders of extension of the same.
2. Learned counsel for the respondents seeks to use an affidavit-in-opposition to the application for condonation of delay. However, upon ascertainment as to the scope of filing such opposition, we find that there is no scope of factual denial of the averments, since the respondents could not have direct knowledge regarding the goings-on between the appellants and their learned Advocates. As to the rest of the paragraphs in the condonation of delay application, those are matters of record and no affidavit is required to be filed. However, we

deem that none of the allegations made in the application for condonation of delay are admitted by the respondents.

3. The ground for the delay has been indicated to be firstly that the appellants were initially advised, after passing of the impugned ad interim *ex parte* injunction, to file an application under Order VII Rule 10 of the Code of Civil Procedure which was duly filed. The appellants were under the impression that the same would be heard out and, as such, there would be no occasion to challenge the ad interim order. Subsequently, upon the said application being kept pending and extensions having been granted periodically in respect of the original *ex parte* order of injunction, the present appeal was decided to be preferred.
4. FMAT 49 of 2025 is the appeal against the original *ex parte* ad interim order of injunction whereas the rest of the appeals arise out of the subsequent extensions of the same.
5. Upon hearing learned counsel for the parties and perusal of the averments made in the application, we are of the opinion that satisfactory explanation for the delay has been given in the application. Moreover, we cannot attribute any *mala fides* to the appellants, since it is the appellants who would be the losers in the event the appeal was filed belatedly.
6. Accordingly, CAN 2 of 2025 is allowed, thereby condoning the delay in filing FMAT 49 of 2025. There will be no order as to costs.

**In re: CAN 1 of 2025 in FMAT 50 of 2025 &
CAN 1 of 2025 in FMAT 51 of 2025**

7. Insofar as CAN 1 of 2025 filed in connection with FMAT 50 of 2025 as well as CAN 1 of 2025 in respect of FMAT 51 of 2025 are concerned, those are also applications for condonation of delay on grounds similar to the application which has already been allowed.
8. Accordingly, by the same logic, the said applications are hereby allowed, thereby condoning the delay in preferring FMAT 50 of 2025 and FMAT 51 of 2025. There will be no order as to costs.

**In re: FMAT 49 of 2025, FMAT 50 of 2025, FMAT 51 of 2025
and FMAT 52 of 2025**

9. All the appeals are now taken up for hearing under Order XLI Rule 11 of the Code of Civil Procedure. Since questions both of fact and of law are involved, the appeals are admitted and are being taken up for hearing on the grounds as taken in the respective memoranda of appeals.
10. In view of the short conspectus of the appeal, as per our previous intention, we take up the appeals for hearing, along with the connected stay applications, on the materials before us (which are sufficient for the hearing of the appeals), without unnecessarily wasting time by calling for the trial court records.
11. The present appeals are directed respectively against an *ex parte* grant of ad interim injunction restraining the defendants from selling,

conveying or dealing with the suit property in favour of third parties and against subsequent orders extending the same.

12. Learned counsel for the appellants argues that the suit is palpably barred by the proviso to Section 34 of the Specific Relief Act in view of only a declaration being sought regarding the purported right of the plaintiff to purchase the suit property on the strength of an agreement for sale, in the absence of any relief of specific performance of such registered agreement for sale having been claimed in the plaint.
13. Secondly, in paragraph no.13 of the plaint, the plaintiffs have alleged that they are not having faith to pay the remaining amount, which might hit at the readiness and willingness of the plaintiffs to have a decree for specific performance.
14. Upon hearing learned counsel for the parties, we find that the suit, in its present form, is *prima facie* barred by the proviso to Section 34 of the Specific Relief Act, since in the absence of any further prayer for specific performance of the contract between the parties, which is necessarily to be sought, the mere declaratory suit would not afford an efficacious relief.
15. Even if a decree declaring the right of the plaintiffs to purchase the suit property on the strength of the agreement-in-question were to be granted, such right would be toothless and inefficacious in the absence of any specific performance of the agreement actually being sought. Since it has been admitted that the defendants refused to honour the agreement, in the absence of any claim for specific

performance within the limitation period, the entitlement regarding which the principal relief of declaration has been sought would also be unenforceable.

16. Moreover, in view of the statement that the plaintiff does not have faith to pay the remaining amount, for whatever reason, as made in paragraph no.13 of the plaint, it is somewhat doubtful as to whether the suit for declaration or specific performance in respect of the contract is hit by the absence of readiness and willingness of the plaintiffs to perform their part of the contract and, thus, to have a decree either for declaration or for specific performance.
17. Hence, the impugned order is vitiated in law, in view of the learned Trial Judge having failed to advert to the lack of *prima facie* case to get an injunction order on the above grounds. Since the original ad interim injunction order (which is the subject-matter of challenge in FMAT 49 of 2025) has been perpetuated by mechanical extensions by the subsequent orders, which are in challenge in the rest of the appeals, the same logic applies to the other appeals as well.
18. Accordingly, FMAT 49 of 2025, FMAT 50 of 2025, FMAT 51 of 2025 and FMAT 52 of 2025 are allowed on contest, thereby setting aside the orders of ad interim injunction and its extensions, which are impugned therein.
19. The connected applications are also disposed of accordingly.
20. However, nothing in this order shall preclude the plaintiffs to seek an amendment of their plaint to incorporate the relief of specific

performance and necessary averments with regard to readiness and willingness to have the agreement performed between the parties.

21. If such an amendment application is made and disposed of favourably, it will be open to the appellants to renew their prayer for injunction, without being precluded in any manner from doing so due to any of the observations made hereinabove or by the present appeals being allowed.
22. In the event such fresh injunction application is made upon the proposed amendment application being allowed, if at all, the learned Trial Judge shall independently decide such application without being influenced unnecessarily by any of the observations made hereinabove.
23. There will be no order as to costs.
24. Urgent Photostat certified copies of this order, if applied for, be made available to the parties upon compliance with the requisite formalities.

(Sabyasachi Bhattacharyya, J.)

I agree.

(Uday Kumar, J.)