

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

FMA 412 of 2025
IA No: CAN 1 of 2025

National Consumers Co-operative Stores Ltd.
Vs.
Faizul Hoque and others

For the appellant	:	Mr. Pushpal Chakraborty, Mr. Arkadipta Sengupta, Mr. Tirthankar Dey, Ms. Ria Naskar
For the respondent no.1	:	Mr. Debabrata Saha Roy, Ld. Sr. Adv., Mr. Pingal Bhattacharyya
For the State	:	Mr. Jayanta Samanta, Jr. Govt. Adv., Mr. Kushal Biswas
Heard on	:	12.08.2025
Judgment on	:	12.08.2025

Sabyasachi Bhattacharyya, J.:-

1. The present challenge has been preferred against an order dated February 10, 2025 passed in WPA 25813 of 2023.
2. The moot question involved in the writ petition, in which the impugned order was passed, is a challenge thrown by the writ petitioner/private respondent herein against the allotment of MR Distributorship licence in favour of the present appellant.

3. There is a chequered history to the matter, which is submitted before us by learned counsel for the appellant.
4. However, upon hearing learned counsel for the parties, we find that by the impugned order, the writ petition itself has not been disposed of. The present appellant, who is the private respondent no. 6 in the writ petition, took a four-fold objection as to maintainability of the writ petition, the first of which was that the writ petition was not maintainable in view of the affidavit supporting it having been sworn on the basis of a special power of attorney by a person who, by his own admission, was 27 years old at the time of filing of the writ petition in the year 2023, whereas the relevant events pleaded in the writ petition took place during a period when the said deponent was a minor.
5. The learned Single Judge decided such point against the present appellant. However, the learned Single Judge was of the opinion that insofar as the other grounds of maintainability and the merits of the writ petition were concerned, it would only be appropriate if the learned Single Judge decided those while hearing the writ petition itself.
6. As such, we do not find that the impugned order qualifies as a “judgment” which is amenable to an intra-court appeal, since no substantial right or liability of the parties was decided as such. However, the appellant has a point in arguing that one of the prongs of the attack to maintainability having been decided, the rights of the

appellant in that limited regard has been affected. Accordingly, we take up the appeal on such limited issue.

7. Learned counsel for the appellant, as done before the learned Single Judge, relies upon certain judgments as well as the provisions of the Code of Civil Procedure in support of the contention that if there is infirmity or misrepresentation or erroneous disclosure in an affidavit, the same merits dismissal of the connected application under Article 226/227 of the Constitution of India.
8. By placing reliance on *Syed Wasif Husain Rizvi vs. Hasan Raza Khan & 6 Ors.*, reported at 2016 SCC OnLine All 175, it is contended that the Court held in the said case that an affidavit shall be confined to such facts as the deponent is able of his own knowledge to prove. On an interlocutory application where a particular fact is not within the deponent's own knowledge but is based on his belief or information received from others, which he believes to be true, the deponent is required to use the expression that he is informed and verily believes such information to be true or words to that effect. The Court, in the said judgment, also quoted the provisions of Order XIX of the Code of Civil Procedure, as amended in Allahabad.
9. Learned counsel also cites *Padmabati Dasi vs. Rasik Lal Dhar*, a 1910 decision where it was held by this Court that the provision of Order XIX Rule 3 of the Code of Civil Procedure must be strictly observed, and every affidavit must expressly state how much is the statement of deponent's knowledge and how much is the statement of his belief,

and the grounds of belief must also be stated with sufficient particularity.

10. Next relying on *Dalip Singh vs. State of Uttar Pradesh and others*, reported at (2010) 2 SCC 114, it is submitted that the Supreme Court held therein that if inaccurate, untrue or misleading statements are made in an application, in dealing with such applications for special leave, the Court naturally takes statements of fact and grounds of fact on their face value and it would be unfair to betray the confidence of the Court by making untrue and misleading statements.
11. On a careful perusal of the rationale laid down in the said judgments, we are, however, of the opinion that the said propositions are not directly germane to the present case.
12. Insofar as *Syed Wasif Husain Rizvi (supra)*'s case is concerned, the Allahabad High Court was dealing specifically with the Allahabad High Court Rules, and the amendments to the Code of Civil Procedure effected in the State of Uttar Pradesh, which are not applicable in the present case, which pertains to Calcutta jurisdiction.
13. That apart, the provisions of Order XIX in general indicate that in an affidavit, it has to be clearly disclosed as to which portions of the averments are true to the knowledge of the deponent and which portions are true to their statement of belief or submissions, which proposition was reiterated in *Dalip Singh (supra)*.
14. Even going by such standard, the premise of the arguments of the appellant here is that the deponent of the affidavit supporting the writ

petition, from which the present appeal arises, was 27 years old in the year 2023 and, as such, was a minor when the relevant germane incidents which were averred in the writ petition happened.

15. However, *per se*, we do not find any reason to hold that the mere minority of a person at the relevant juncture in any manner vitiates his knowledge of such facts.
16. Under the Contract Act, to enter into a valid contract or to give consent, a person has to be a major. However, such provisions do not debar a person from validly having knowledge of some facts which occurred during the period when he was a minor and does not prevent such person, when he acquires majority, from standing by such knowledge and information by reiterating the same. The acquisition of information or knowledge in any form by a person who has intelligent preference, although a minor, does not fall within the category of such minor giving consent or entering into a contract. In fact, if a minor witness can adduce evidence in a legal proceeding, there is no reason why a minor, after attaining majority, cannot assert the veracity of knowledge derived by him during such minority by affirming an affidavit.
17. Thus, *per se*, the minority of the deponent of the writ petition at the time of the relevant happenings averred in the writ petition does not take away anything from his having knowledge of the facts. Since such knowledge has been stated to have been acquired on oath by affirming in the *jurat* portion of the affidavit that the relevant

paragraphs are true to the knowledge of the deponent, it is for the present appellant/respondent no.6 to rebut such factum of knowledge of the deponent by way of cogent evidence at the hearing of the writ petition, if necessary by filing affidavit-in-opposition or otherwise. However, on the face of it, it cannot be said that the minority of the deponent hits *ex facie* at the maintainability of the writ petition itself merely because he stated that the events which happened during his minority are true to his knowledge.

18. Thus, we are in complete agreement with the findings of the learned Single Judge that the writ petition could not be held to be not maintainable at the threshold merely on such ground alone.
19. Insofar as the other grounds and objections taken by the appellant are concerned, those have, in any event, been kept open by the learned Single Judge for being decided at the final hearing of the writ petition. In fact, the learned Single Judge observed that the second point of maintainability is set at rest “for the time being”, thereby indicating that it will be dealt with at the time of hearing of the writ petition.
20. In respect of the other objections to maintainability taken by the appellant before the writ court, those have not been dealt with at all and it is evident that those shall also be decided finally at the time of final hearing of the writ petition by the learned Single Judge.
21. Thus, there is no scope of interference with the impugned order in the light of the above observations.

22. Accordingly, FMA 412 of 2025 and, consequentially, CAN 1 of 2025 are dismissed on contest.
23. It is, however, made clear that this Court has not entered into the merits of the respective contentions of the parties in connection with the main writ petition as well as the other issues of maintainability raised by the appellant before the learned Single Judge and those are kept open for being decided by the learned Single Judge at the final hearing of the writ petition along with the merits of the same.
24. There will be no order as to costs.
25. 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.)