

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 556 of 2025
IA No: CAN 1 of 2025

Eden Infracon Private Limited
Vs.
Savita Bhagat and others

For the appellant : Mr. Siddhartha Banerjee,
Mr. Soumyajit Majumdar,
Ms. Soni Ojha,
Ms. Sambrita B. Chatterjee

For the respondent
nos.10 to 12 : Mr. Soumyajit Bhatta,
Mr. Prasenjit De

For the respondent
no.16 : Mr. Pronojit Roy

Heard on : 17.06.2025

Judgment on : 17.06.2025

Sabyasachi Bhattacharyya, J.:-

1. Affidavit-of-service filed today be kept on record.

2. Learned counsel appearing for the respondent nos. 10 to 12 seeks to submit on merits with regard to the facts of the case. However, since the appeal itself arises out of an ad interim order of injunction which was refused primarily on the ground of a jurisdiction clause and the existence of an arbitration clause, and there was no occasion for the defendants/respondents to put in their written objection at that stage, we cannot permit the scope of the appeal to be widened to incorporate factual considerations which were not before the learned Trial Judge.
3. We find that despite substantial service having been effected, the respondents other than respondent nos. 10 to 12 and 16 are unrepresented.
4. Learned counsel appearing for the respondent nos. 10 to 12 contends that in view of the transfer of the property by the respondent nos. 1 to 9, those respondents shall not be prejudiced in the event the appeal is disposed of in their absence.
5. We find from the averments made in the plaint, which are the germane consideration at the ad interim stage, that there is substance in the contention of learned counsel for the respondent nos. 10 to 12.
6. In any event, since the absentee respondents choose not to appear despite service being substantially effected on them, we are of the opinion that substantial justice would be subserved if the appeal, along with the application, itself is disposed of, granting opportunity to the defendants/respondents to file their written objections, thereby

bringing in all the necessary facts, in connection with the temporary injunction application pending in the court below.

7. As held at the ad interim stage, a sufficiently strong prima facie case for grant of injunction has been made out, since neither the jurisdiction clause nor the arbitration clause in the concerned document *per se* debar the civil court from entertaining and deciding the suit. Even otherwise, it is evident from the averments in the plaint and the temporary injunction application filed in the court of first instance that prima facie triable issues have been made out for hearing of the injunction application and suit on merits. Also, the other yardsticks such as balance of convenience and inconvenience and irreparable injury are substantially met in the instant case.
8. Accordingly, we dispose of FMA 556 of 2025, by treating the same to be on the day's list, along with CAN 1 of 2025, thereby setting aside the impugned order and granting ad interim order of injunction restraining the defendants/respondents and their men and agents from transferring, alienating and/or encumbering the suit property in favour of third parties in any manner till disposal of the temporary injunction application.
9. The defendants in the suit shall file their respective written objections to the temporary injunction application pending in the trial court within three weeks from date. Reply thereto, if any, shall be filed within a week thereafter.

10. The learned Trial Judge shall dispose of the injunction application at the earliest thereafter, preferably within August 31, 2025.
11. It is made clear that the learned Trial Judge shall dispose of the injunction application on its own merits independently, without being swayed by any of the observations made above.

(Sabyasachi Bhattacharyya, J.)

I agree.

(Uday Kumar, J.)