In the High Court at Calcutta
Civil Appellate Jurisdiction
Appellate Side

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

F.M.A. No. 711 of 2025
The Gayatri Chetna Foundation
Vs.
Sri Manoj Joshi and Others

With

F.M.A.T. No. 122 of 2025
+
CAN 1 of 2025
Smt. Anjana Meharia and Others
Vs.
Sri Manoj Joshi and Others

For the appellants in FMAT No.122 of 2025	:	Mr. Piush Chaturvedi, Ld. Sr. Adv., Mr. Suman Basu, Mr. Ayan Banerjee, Ms. Debapriya Ghosh
For the respondent nos.1 to 5	:	Mr. Aniruddha Chatterjee, Ld. Sr. Adv., Mr. Tanmoy Mukherjee, Mr. Amit Kumar Nag, Mr. Partha Banerjee, Ms. Pritha Bhowmick, Ms. Ranjabati Roy
For the appellant in FMA No.711 of 2025 and For the respondent no.7 in FMAT No.122 of 2025	:	Mr. Saptansu Basu, Ld. Sr. Adv., Ms. Dabasree Dhamli, Ms. Debaleena Chatterjee
Hearing concluded on	:	23.04.2025
Judgment on	:	28.04.2025

Sabyasachi Bhattacharyya, J.:-

1. Both the appeals have been preferred by the proforma defendant no. 6-Trust and the defendant nos.1 to 4 respectively, against the self-same order of ad interim injunction passed in a suit filed by the plaintiffs/respondents claiming a decree of declaration that the plaintiffs and the defendants, being trustees of Gayatri Chetna Foundation, the proforma defendant no.6 in the suit, are bound to act in pursuance of the objectives of the Trust Deed dated December 4, 2018, as modified by Trust Deed dated January 15, 2020, for permanent injunction restraining the defendants from doing any act contrary to the interest of the Gayatri Chetna Foundation, not to cause any obstruction in furtherance of the objectives of the said Foundation in pursuing, developing the Academic Institute run under the name and style of Gayatri Chetna Trust, and for other consequential reliefs.

2. By the impugned order, the learned Trial Judge granted *ad interim* injunction directing the defendant nos.1 to 5 to sign the required cheques of the Bank of Maharashtra at S.P. Mukherjee Road Branch for disbursement of the examination fees and semester charges in favour of MAKAUT and also directing the defendant nos.1 and 2 to execute all cheques for disbursement along with the plaintiff/respondent no.1 for effective and smooth running of the proforma defendant and further in the event of failure, the plaintiff/respondent nos.1 and 2 were permitted to operate the bank account of the proforma respondent. The plaintiffs were also directed to submit periodical monthly accounts before the court. The suit has been framed under Section 92 of the Code of Civil Procedure.

3. Learned senior counsel appearing for the appellant/appellants in both the cases argues that the learned Trial Judge, despite being aware of a caveat having been lodged by the present appellants, granted *ad interim* injunction without directing service of prior notice to the caveators on the dual ground that although Smt. Anjana Meharia, the appellant no.1 in F.M.A.T. No. 122 of 2025, had lodged a caveat on behalf of the proforma defendant-Trust (the appellant in F.M.A. No. 711 of 2025), there was no resolution and authority of the said Trust empowering her to lodge such caveat and that the caveatees are related to George College and not with the Gayatri Chetna Foundation, the appellant.

4. It is argued that in terms of Section 148-A of the Code of Civil Procedure, a mandatory duty was cast upon the Court to direct service of a copy of the injunction application on the caveator and to give notice to the caveator before passing any *ad interim* order.

5. It is urged that since such duty was flouted while passing the impugned order, the same should be recalled. In support of such contention, learned senior counsel for the appellants cites a Division Bench Judge of this Court in the matter of *Sukumar Roy & Anr v. Pratul Kumar Roy*, reported at *90 C.W.N. 288*.

6. Learned senior counsel next contends that in the impugned order itself, it was recorded that the urgency pleaded was that the funds of the appellant-Trust were required for the purpose of defraying the semester charges and examination fees of the students of the Academic Institute of the Trust, which was allegedly being hampered by the actions of Mrs. Anjana Meharia, the Managing Trustee of the appellant. However, in the self-same order it was recorded that the tentative last date for filling up forms for the examination was from March 13, 2025 to March 18, 2025, whereas the order was passed on March 7, 2025. Thus, there was ample time to hear the matter for the purpose of consideration of grant of *ad interim* orders upon notice to the caveator.

7. Learned senior counsel appearing for the appellants next contends that although the payment of examination fees for the students was cited as the ground of urgency, the bank statement of the Trust, operated by the plaintiffs/respondents after the impugned order, goes on to show that not a single payment was made to MAKAUT, the university to which the Academic Institute of the appellant-Trust is affiliated. There were even certain withdrawals which indicate self cheques being drawn by the plaintiffs in their favour. Thus, the impugned order was abused by the plaintiffs/respondents, which goes on to show that in the garb of such pseudo-urgency, the plaintiffs/respondents sought to gain control over the bank account of the Trust, thereby ousting the founder members of the Trust, that is, the defendants in the suit.

8. Learned senior counsel further argues that Section 92 of the Code of Civil Procedure is not applicable since the Trust Deed mentions that it is governed by the Indian Trust Act and no dispute within the contemplation of Section 92 of the Code of Civil Procedure, relating to the management to the Trust, has been raised. The disputes, if any, pertain entirely to the management of the Academic Institute run by the Trust and not in respect of the Trust itself. Hence, the assumption of jurisdiction under Section 92 was erroneous in law.

9. Learned senior counsel for the appellants further submits that in the garb of *ad interim* order, the final relief claimed in the suit has been granted.

10. Learned senior counsel next contends that as per the plaint case, there are 76 students of the Academic Institute run by the Trust, out of whom 41 students were to take the examination. However, the bank statement of the Trust itself shows that there were 113 entries of alleged payments to students. Apart from the number of students being inflated, the figure of the amount paid by way of examination fees, it is argued, is disproportionate with the examination fees payable for the semester-in-question.

11. It is submitted that it may very well be that the funds of the Trust were siphoned off and sequestered by the plaintiffs/respondents for the purpose of meeting the expenses of the students of the George College itself, of which the plaintiffs are members, and/or third parties. Be that as it may, the amount lying in the bank account was not utilized by the plaintiffs/respondents for payment to MAKAUT to meet the examination fees and semester charges of the students of the Academic Institute run by the appellant-Trust.

12. It is contended that the respondents seek to rely on money receipts issued by the defendants/original trustees in the year 2016, much before the respondents were inducted.

13. The short backdrop of the case, it is submitted, is that originally the appellant-Trust was founded by its trustees, the defendants. Subsequently, the plaintiffs/respondents, who are members of the George College, were inducted as co-trustees of the Gayatri Chetna Foundation, the appellant, for better management of the Academic Institute of the Trust, since the plaintiffs had prior experience in the field, having run the George College and its various affiliated institutes. Immediately upon induction, however, the plaintiffs started attempting to wrest control over the funds of the Trust by ousting the original trustees.

14. Learned senior counsel for the plaintiffs/respondents controverts such arguments and alleges that the caveat was lodged in respect of proposed applicants described as trustees of the George College. However, the suit has been filed in the individual names of the said applicants and not in the capacity of George College Trustees or functionaries of the George College. Thus, on the strength of the said caveat, there was no scope of service of any notice of the application on the caveator.

15. Learned senior counsel appearing for the plaintiffs/respondents next argues that despite the appellants having argued that Rule 40-A (10) of the Civil Rules and Orders framed by this Court mandates, in case of a defect in a caveat, the same to be placed before the court and the court to give an opportunity of removal of the defect immediately, the caveat lodged by the appellant was not defective as such and, hence, there was no scope of directing such defect to be cured. The premise of the caveat was that a suit and connected applications may be filed by trustees of the George College whereas the plaint of the present suit has not been filed by the plaintiffs in the capacity of trustees of the George College but as trustees of the appellant-Trust itself. Hence, non-service of prior notice on the caveator does not vitiate the impugned order.

16. It is next contended by the respondents that the 113 entries in the bank statement pertain to 41 students only. The extra entries correspond with GST and other ancillary payments required to be made along with the examination fees. Thus, the number of students was not inflated. It is submitted that although initially amounts were collected for examination fees from the students, subsequently, since the trust does not have net banking facilities in its bank account with the Bank of Maharashtra and it was found that the payments would be received by the MAKAUT University directly from the students, the payments were made directly to the students by the plaintiffs by way of cheques upon obtaining the *ad interim* injunction for the purpose of meeting examination fees and other expenses in that regard.

17. Further, accounts have duly been furnished in the trial court in terms of the impugned order, supported by affidavit, copies of which have already been served on the appellants.

18. Learned senior counsel appearing for the plaintiffs/respondents further argues that Section 92 of the Code of Civil Procedure is applicable, since the Trust is for a public purpose and the disputes relate to the management of the Trust itself and its funds.

19. The impugned order was passed in aid of the final reliefs sought in the plaint and does not tantamount to granting the final reliefs of the suit.

20. It is alleged by the plaintiffs/respondents that the founding trustees had misappropriated the funds of the Trust from long before and in the very second meeting after induction of the plaintiffs, such defalcation was discovered and the issue was raised and explanation was sought by the plaintiffs. Thereafter, to avoid scrutiny by the plaintiffs, the original trustees removed the plaintiffs from the array of signatories in the bank account of the Trust and arrogated to themselves the operation of the bank account. Thus, due to such misappropriation of funds of the Trust, the suit had to be instituted.

21. Upon hearing learned counsel for the parties, the first issue which arises for consideration is whether the learned Trial Judge was justified in granting *ad interim* injunction without service of any notice on the caveator/proforma defendant no. 6-Trust.

22. Two reasons were cited by the learned Trial Judge for doing so – first, that there was no resolution or authority of the appellant-Foundation empowering Mrs. Anjana Meharia, the defendant no.1 in the suit, to lodge the caveat on behalf of the proforma defendant no.6, the Gayatri Chetna Foundation, and secondly, that the caveatees were related to George College and not with the Gayatri Chetna Foundation.

23. However, neither of the said grounds is tenable in the eye of law. The language of Section 148-A is of the widest amplitude. Sub-section (1) of Section 148-A of the Code contemplates "any person claiming a right to appear before the Court" on the hearing of the application to be entitled to lodge a caveat. On the other hand, sub-section (3) of the said Section provides that where, after a caveat has been lodged under sub-section (1), “any application is filed in any suit or proceeding”, the court shall serve a notice of the application on the caveator.

24. From a bare perusal of the caveat lodged in the present case, copies of which have been handed over in court by the parties during arguments, we find that the caveat was lodged on behalf of the Gayatri Chetna Foundation, the proforma defendant no.6 in the suit, by its managing trustee, the defendant no.1 in the suit. Sub-sections (1) and (3) of Section 148-A, read in conjunction, mandates the court to direct service of a notice on the caveator of *any* application, if filed in *any* suit or proceeding, thus not restricting the suit only to those filed specifically by the apprehended applicants. The only requirement for entitling a person to such notice is lodging a caveat in respect of the subject-matter of the prospective suit or proceeding.

25. Again, under sub-section (1), *any person claiming a right to appear* may lodge a caveat. Thus, contrary to the finding of the learned Trial Judge, it was not necessary for the defendant no.1, Mrs. Anjana Meharia to produce her credentials, either by way of an authority or a resolution of the Trust, at the juncture of lodging a caveat. She could, even in her individual capacity, have filed such caveat merely by claiming a right to be heard, within the wide amplitude of Section 148-A(1) of the Code. That apart, Rule 40-A of the Civil Rules and Orders and the corresponding format of a caveat does not contemplate the filing of any resolution or authority by any person lodging a caveat on behalf of a

Trust at the stage of lodging a caveat. One merely has to 'claim' a right to appear at the hearing and need not substantiate such right at the caveat stage to the hilt.

26. The other ground on which the learned trial Judge refused to direct service of notice on the caveator in the instant *lis* was equally untenable in the eye of law. It is immaterial whether the caveatees were described in the caveat as trustees/functionaries of the George College or not. A bare perusal of the caveat shows that the plaintiffs were all mentioned therein as proposed applicants and their respective addresses given in the caveat exactly tally with their respective addresses as given in the cause title of the plaint. Thus, there could not be any ambiguity of identity insofar as the present plaintiffs being apprehended in the caveat to be the proposed plaintiffs.

27. In fact, it is from the perspective of the caveator that the right under Section 148-A is to be looked into. Whoever files a suit, in whatever capacity, if a caveat is validly lodged regarding the subject-matter of such suit, it is the mandatory duty of the court to direct service of notice on the caveator before passing any order in connection with an application relating to which such caveat has been lodged.

28. In the present case, since the proforma defendant no.6, the Trust itself, is one of the defendants, at least a copy ought to have been served on the Trust. By clever drafting, the Trust itself has been arrayed as a proforma defendant to avoid service of copy of caveat on the said Trust. However, there is no distinction in the Code of Civil Procedure between a defendant and a proforma defendant. The Code envisages only plaintiffs and defendants, without the prefix “proforma”. The expression “proforma” has been introduced by the Bar in general to describe proper parties, who may not be necessary parties, and against whom no direct relief might have been sought.

29. However, the moment the suit is couched as one under Section 92 of the Code of Civil Procedure, it is the management of the proforma defendant no.6 which falls for consideration before the court and, as such, any relief granted in the suit would directly affect the said Trust.

30. Insofar as the defendant no. 1 Smt. Anjana Meharia is concerned, she lodged the caveat in the capacity of a trustee of the proforma defendant no. 6-Trust and was impleaded as the first defendant in the suit in such capacity only, since the first relief claimed in the suit is a declaration that the plaintiffs as well as the defendants, “being trustees” of the proforma defendant no.6, are bound to act in pursuance of the objectives of the Trust Deed dated December 4, 2018, as modified by Trust Deed dated January 15, 2020. Thus, there could not be any excuse to avoid service of notice on her in a suit instituted on the specific subject-matter enumerated in the caveat.

31. Hence, the grounds for refusing notice on the caveator are, at best, specious.

32. We further find that in Item No.7 of the caveat, while describing the nature of proceeding, the caveator specifically mentioned “any proceeding relying on and/or challenging any action or actions out of the Trust Deed dated December 4, 2018 and/or Deed of Modification dated January 15, 2020 and/or Memorandum of Understanding dated

January 15, 2020 and/or any affairs of Gayatri Chetna Foundatioin and/or any functions or actions or inactions of the Academic Institute of the Gayatri Chetna Foundation".

33. Seen from such perspective, the principal relief (a) in the plaint is a decree that the plaintiffs and defendants, being trustees of the Gayatri Chetna Foundation (proforma defendant no. 6), are bound to act in pursuance of the provisions of the said Trust Deed dated December 4, 2018, modified by the Trust Deed dated January 15, 2020. Reliefs (d) and (e) of the plaint pertain to the day-to-day running of the Academic Institute of the Gayatri Chetna Foundation.

34. As such, the subject-matter of the suit was squarely covered by the caveat. Under such circumstances, it was mandatory for the court to direct the prior service of a notice on the caveator before passing any order. The law does not provide any window of exception for avoiding notifying a caveator on the ground of urgency. However, even proceeding on the premise that the court was looking at impending loss of an academic year of the students who were to take the concerned examinations due to non-disbursal of funds for paying their examination fees and semester charges, it was recorded in the impugned order itself that the tentative last date for filling up forms of the examination was from March 13, 2025 to March 18, 2025, the first of which dates was about a week subsequent to the date of passing of the *ad interim* order, that is, March 7, 2025. Hence, there was ample time left for directing a notice to be served on the caveator before even the commencement of the last date for filling up examination forms. Hence, urgency could not be a ground to defeat the caveat.

35. As held by a co-ordinate Bench of this Court in *Sukumar Roy (supra), rules of caveat are meant to give opportunity to the party to contest any claim of injunction before it is made. If a caveat was actually lodged before the order was sought for, the court could not still proceed to say that he would proceed on the erroneous endorsement of the Assistant Registrar. The only course open to the learned Judge, even if the endorsement of the Assistant Registrar said that there was no caveat, was to recall the order forthwith and re-hear the matter on contest, which would be the correct procedure to be followed to fulfil the real object for the rule of caveat.*

36. In the present case, there was not even any wrong endorsement of the concerned Department of the Trial Court. The learned District Judge, in the impugned order itself, categorically recorded that a caveat was pending but refused to direct prior notice on frivolous grounds, which course of action is in direct contravention of Section 148-A of the Code of Civil Procedure.

37. In view of our above observations, since we are of the opinion that the learned District Judge-in-Charge exercised jurisdiction not vested in him by law in granting *ad interim* order without directing prior service of notice on the caveator, the entire findings in the impugned order are otherwise vitiated due to lack of jurisdiction.

38. Thus, we need not enter into the merits of the *ad interim* prayer for injunction otherwise, as, in such case, we would ourselves be guilty of the legal infraction committed by the learned District Judge-in-Charge.

39. Sitting in appeal, for the first time, it is not for us to enter into the merits of the *ad interim* prayer, since in the first place, the limited jurisdiction of the Appellate Court is to look at the legality of the order impugned before it. In the event we were to adjudicate on the *ad interim* prayer on merits, it would be gross usurpation of the province of the first forum available to the parties, thereby robbing them of the opportunity of preferring a further appeal.

40. In any event, since the defendants in the suit, we are informed, have already filed an application seeking to file written objection to the injunction application itself, we direct the present appellants and the other defendant in the suit to file their written objection(s) to the temporary injunction application pending in the trial Court within a fortnight from date. We also expect the learned District Judge/ District Judge-in-Charge to dispose of the injunction application itself as expeditiously as possible, preferably within four (04) weeks from the date communication of this order to the court of first instance.

41. We also clarify that we have not entered into the merits of the case otherwise but are inclined to set aside the same due to dearth of jurisdiction for non-service of prior notice on the caveator and it will be open to the learned District Judge/ District Judge-in-Charge to decide all questions involved in the injunction application independently on their own merits, upon giving opportunity to the parties to advance their respective arguments.

42. Thus, in the light of the above observations, we are unable to sustain the impugned order.

43. Accordingly, F.M.A. No.711 of 2025 and F.M.A.T. No.122 of 2025 are allowed on contest, thereby setting aside the impugned order, bearing Order No.01 dated March 7, 2025 passed by the learned District Judge-in-Charge at Alipore, District: South 24 Parganas in Title Suit No.04 of 2025, and requesting the learned District Judge (in the event of absence of the District Judge, the District Judge-in-Charge) to dispose of the injunction application within four (04) weeks from the date of communication of this order to the said Court. As held earlier, the defendants in the suit shall file their written objection(s) to the temporary injunction application in the court below within a fortnight from date.

44. Consequentially, CAN 1 of 2025 stands disposed of as well.

45. There will be no order as to costs.

46. Urgent certified server copies, if applied for, be issued to the parties upon compliance of due formalities.

(Sabyasachi Bhattacharyya, J.)

I agree.

(Uday Kumar, J.)