

Form No.J(2)

IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
Appellate Side

Present : The Hon'ble Mr. Justice Sabyasachi Bhattacharyya
&
The Hon'ble Mr. Justice Uday Kumar

FAT No. 169 of 2025
+
CAN 1 of 2025

Md. Zakaria Khan
-vs-
Molla Mohammad Abdul Kabir

For the appellant : Mr. Krishna Das Podder,
Mr. Surajit Maity,
Ms. Mandira Barman.

For the respondent : Mr. Siddhartha Banerjee,
Mr. Abhishek Baran Das.

Heard on : April 30, 2025.

Judgment on : April 30, 2025.

Sabyasachi Bhattacharyya, J.:

1. On consent of the parties, the appeal and the connected application are taken up for hearing together.

2. Although a defect has been pointed out by the Stamp Reporter, we do not find any such defect since the name of the plaintiff/appellant tallies with the appellant in this Court.
3. The appeal has been preferred against a judgment and deemed decree whereby the defendant/respondent's application under Order VII Rule 11 of the Code of Civil Procedure (in short, "the Code") has been allowed, thereby rejecting the plaint, *inter alia*, on the ground of bar as incorporated in the proviso to Section 34 of the Specific Relief Act, 1963. (hereinafter referred to as "1963 Act").
4. The cause of action of the suit as well as all the allegations made in the suit primarily center around the alleged breach of two agreements by the defendant. However, in the relief sought in the plaint, no relief of specific performance was sought. The suit is entirely for declaratory reliefs and permanent injunction.
5. We find from a perusal of the impugned judgment and the plaint and upon hearing learned counsel for the parties that the learned Trial Judge was justified in passing the impugned judgment and deemed decree, since on the face of the plaint, it is *ex facie* barred by law, being the proviso to Section 34 of

the 1963 Act, having not pleaded specific performance as a relief, although all the components of the cause of action indicate towards the suit being one based on the alleged breach of contract.

6. Accordingly, we do not find any scope of interference with the impugned judgment and deemed decree.
7. Hence, FAT No. 169 of 2025 is dismissed on contest.
8. Consequentially, CAN 1 of 2025 is also disposed of.
9. There will be no order as to costs.
10. Urgent photostat certified copies of the order, if applied for, be supplied to the parties at an early date.

I agree.

(Sabyasachi Bhattacharyya, J.)

(Uday Kumar, J.)