

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

F.M.A. 733 of 2025
IA No: CAN 1 of 2025

Md. Shahid
Vs.
Arshad Hassan and others

For the appellant : Mr. Sohail Haque
Ms. Musarrat Saba

For the respondent no.1 : Mr. Shibendra Nath Chattopadhyay
Ms. Gargi Acharyya
Ms. Riyanka Chakraborty

Heard on : 20.05.2025

Judgment on : 20.05.2025

Sabyasachi Bhattacharyya, J.:-

1. The plaintiff/appellant submits that the plaintiff runs a school at the premises adjacent to the disputed common passage. By a previous arbitral award under the Arbitration Act, 1940 which culminated in a decree dated June 6, 1945, the common rights

of the parties/their predecessors were decided in respect of the suit passage, which is marked by the letter 'E' in the sketch map annexed at page-37 of the present injunction application, which is a part of the documents produced in the trial court.

- 2.** It is submitted that the defendants, who own an adjacent plot to the school which is being run by the plaintiff, are disturbing the ingress and egress of the plaintiff to such school as well as blocking the parents, guardians, teachers, staff, students and others from entering into the said school by parking cars and/or blocking the entrance to the garage of the school by storing commercial adhesive containers which are inflammable in nature as well as rubber sheets.
- 3.** It is argued that initially a suit for the same reliefs was filed by the plaintiff/appellant where injunction was granted.
- 4.** However, subsequently the said suit was dismissed with leave to file afresh in view of the description of the suit property being vague according to the learned trial court.
- 5.** With such leave, the present suit has been filed for declaration of the plaintiff's right over the common passage and for permanent injunction in aid thereof.
- 6.** In the suit, an injunction application was filed.

- 7.** By the impugned order, the learned trial Judge has refused such injunction on the ground that by virtue of a previous award of arbitration proceedings, the common passage described in Schedule 'B' of the plaint (marked as Lot 'E' in the sketch map referred to above) is in common use of the plaintiff, defendants and other owners of the adjacent premises situated by the side of the said passage and falls in Lots A, B, C and D and no injunction can be issued as it will affect the persons who are not parties to the suit.
- 8.** However, we find from the sketch map-in-question that the injunction sought by the plaintiff/appellant, if granted, cannot have any bearing on the user of the passage by third parties and/or create any hindrance to such user by either the present parties or the adjacent owners.
- 9.** The nature of the injunction prayed for is confined to alleged blockage of the entrance of the school run by the plaintiff by the defendants and, as such, is restricted to infringement of the legal right of the plaintiff to run the school by disturbing the ingress and egress thereto.
- 10.** Hence, the premise on which the injunction was refused is not sustainable on the facts of the case as well as the law governing the field.

- 11.** Rather, in view of the extreme urgency involved, since the plaintiff is running a school and the outcome of the present appeal would affect the fate of several students, staff, teachers and guardians, we are of the opinion that a sufficient *prima facie* case has been made out by the plaintiff/appellant for grant of injunction, on the strength of the decree passed in 1945 and the arbitral award leading thereto.
- 12.** In such view of the matter, we give a proposal to learned counsel as to whether we shall take up the appeal itself for hearing along with the application, to which learned counsel for both sides, in their usual fairness, agree.
- 13.** Accordingly, we admit the appeal and take it up for disposal.
- 14.** In the light of the above observations, FMA 733 of 2025 is allowed on contest, thereby setting aside the impugned order bearing Order No.14 dated March 13, 2025 passed by the learned Judge, Fifth Bench, City Civil Court at Calcutta in Title Suit No.1370 of 2024, and granting injunction restraining the defendants/respondents and/or their men and agents from blocking the ingress and egress to the suit property, which belongs to the plaintiff and where the plaintiff/appellant is running a school, by restricting the common passage marked as Schedule 'B' in the plaint, by parking cars, storing highly

inflammable commercial adhesive containers and rubber sheets or in any other manner whatsoever till disposal of the suit.

- 15.** It is expected that the learned trial Judge shall make endeavour to dispose of the suit itself as expeditiously as possible without granting any unnecessary adjournment to either party.
- 16.** CAN 1 of 2025 is disposed of accordingly as well.
- 17.** There will be no order as to costs.

(Sabyasachi Bhattacharyya, J.)

I agree.

(Uday Kumar, J.)

AD-07
AK