

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

FMAT 143 of 2025
With
CAN 1 of 2025

Gobindapur Sephali Samaj Seba Samity
represented by Mr. Sukumar Rana and Ors.
Vs.
Gobindapur Sephali Samaj Seba Samity
represented by Mr. Subhas Ghosh and Ors.

For the Appellants	:	Mr. Saptansu Basu, Sr. Adv., Mr. Gourav Purkayastha, Ms. Sushmita Choudhury
For the Respondent nos. 1 to 3	:	Mr. Debasish Roy, Sr. Adv. Mr. Sauradeep Dutta
For the Respondent No. 4	:	Mr. Abhra Mukherjee, Mr. Anjan Banerjee, Mr. Himadree Ghosh
For the Respondent	:	Mr. Nirbanesh Chatterjee,

Nos. 5 & 6

Mr. Arpayan Mukherjee,
Mr. S. Mondal

Heard on : May 5, 2025.

Judgment on : May 5, 2025.

Sabyasachi Bhattacharyya, J.:

1. Learned Senior Counsel appearing for the plaintiffs/respondent nos. 1 to 3 takes a preliminary objection to the maintainability of the appeal.
2. The appeal has been preferred against an ad interim order of injunction.
3. Learned senior counsel for the plaintiffs/respondents submits that since the impugned order was passed up to May 2, 2025, that is for a limited period, and has since expired, the appeal has been rendered infructuous.
4. It is submitted secondly that the ad interim order granted by the present impugned order was subsequently extended. In the absence of a challenge against the said extension, the present appeal would not serve any fruitful purpose, since even if the appeal succeeds, the extension order would remain on record.

5. However, we are unable to accept either of the contentions of the plaintiffs/respondents.
6. In the view of this court, in the event the present impugned order is set aside, the subsequent extension order would automatically be denuded of its basis.
7. As such, since the parent order itself has been challenged by way of the present appeal, we are of the opinion that mere subsequent extension and lack of challenge to the subsequent extension order does not vitiate the maintainability of the present appeal.
8. Insofar as the impugned order herein having been passed for a limited period, the argument of the respondents is self-defeating since by virtue of the extension, the life of the present order has been extended and as such, the relevance of the present appeal still remains.
9. Thus, we hold that the appeal is otherwise maintainable in the eye of law.
10. Since questions of both facts and law have been urged in the appeal, we admit the appeal to be heard on the grounds taken in the Memorandum of appeal.

11. On consent of learned Counsel for both the parties, the appeal itself is taken up for hearing along with the application, since the issues involved in both are identical.
12. Learned Senior Counsel appearing for the appellants contends that the impugned order of ad-interim injunction was granted without any urgency being made out by the plaintiffs/respondents even on the averments made in the plaint and the injunction application. Whereas the plaintiffs plead that the cause of action for the suit arose upon the removal of the plaintiff no. 2 from the post of Secretary of the concerned Society in the month of February, 2024, the suit, along with the injunction application, were filed only in the month of March, 2025, that is, one year after the alleged cause of action.
13. That apart, a cardinal premise of the impugned order, it is argued, is that there is apprehension of misappropriation and mismanagement, without there being any pleading to that effect, either in the plaint or in the injunction application.

14. As such, it is argued that the impugned order ought to be set aside.
15. Learned Senior Counsel appearing for the plaintiffs/respondents argues that the removal of the plaintiff no. 2 as the Secretary of the plaintiff no. 1 society was palpably unlawful and *de hors* the Articles of the society itself.
16. By placing reliance on Clause 3 of the said Articles, it is pointed out that the same stipulates that in case of a general meeting, at least seven days' prior notice has to be given to the members. Even in case of an emergency meeting, at least 24 hours' hours notice is to be given.
17. However, in the present case, as revealed from the annexures to the stay application filed by the appellants themselves in connection with the present appeal, no such notice was given. Learned Senior Counsel for the respondents particularly places reliance on the Annexure at Page 83 of the stay application, which is purportedly the printout of an email dated January 16, 2024 at 11.25 a.m, fixing an emergency meeting on the self-same date, thus, not even leaving twenty four hours between the notice and the meeting.

18. That apart, the email id of the plaintiff/respondent no. 2 mentioned in the said email, it is alleged, is not the actual email id of the plaintiff no. 2. Whereas the email id of the plaintiff no. 2 is in lower case letters, the email id given in the email dated January 16, 2024 is entirely in upper case.
19. Moreover, even from the subsequent documents annexed to the stay application, it is seen that the mandatory stipulation of 24 hours' notice has been flouted. Also, the Articles of the Society provides that in its meetings, issues beyond the agenda which has been fixed previously cannot be discussed, which has been precisely done in the present case for the purpose of removal of the plaintiff no. 2 as Secretary without even any prior notice to the plaintiff no. 2.
20. As a result of such illegal removal, it is argued that there has been rampant mismanagement in the affairs of the society, for which an FIR had to be lodged.
21. However, upon hearing learned Counsel for the parties and going through the materials on record, we find that neither the documents annexed to the stay application nor the purported FIR which has been allegedly lodged subsequently find place

as a part of the records before the learned Trial Judge at the time of passing the impugned order.

22. From the plaint as well as the injunction application before us, we do not find a single whisper as to there being any misappropriation of funds by the defendants/appellants, which is one of the primary premises of the impugned order of injunction.
23. The mere apprehension of mismanagement as mentioned in the plaint, without any further particulars to back up such alleged mismanagement of the affairs of the society by the defendants/appellants, could not have justified the grant of ex parte ad interim order of injunction.
24. It is well-settled that the tests for grant of ex parte ad interim injunction are of a higher standard than a contested hearing in the sense that the statute mandates the court to record proper reasons as to the justification of grant of ad interim injunction on the ground of urgency if the same is passed ex parte. We do not find any such justification on the ground of urgency in the impugned order or even any pleading of the plaintiffs to that effect in their plaint or injunction application.

25. Moreover, the learned Trial Judge entirely overlooked the fact that the cause of action pleaded in the plaint and the injunction application pertains to the month of February, 2024 whereas the suit and the injunction application were filed more than one year thereafter, in the month of March, 2025. The delay itself defeats equity and we do not find any extreme urgency for the grant of ex parte ad interim injunction without hearing the defendants/appellants.
26. That apart, as held earlier, since there is no foundational pleading in the plaint or the injunction application as to mismanagement of the affairs of the society or misappropriation of its funds by the defendants/appellants, the learned Trial Judge acted in a perverse manner in relying on such assumed misappropriation and mismanagement as a basis to pass the ad interim order of injunction.
27. As such, we find that the impugned order is tainted by the above illegalities and as such ought to be set aside.
28. At this juncture, we are informed that at present an application filed by the defendants/appellants under Order XXXIX Rule 4 of the Code of Civil Procedure is pending. The

main injunction application has been fixed for hearing on June 11, 2025.

29. Although the parameters of Order XXXIX Rule 4 of the Code are different from an appeal against an ad-interim order of injunction under Order XLIII of the Code of Civil Procedure, we are of the opinion that for the ends of justice and to cut short the matter, the learned Trial Judge ought to be requested to decide the application under Order XXXIX Rule 4 along with the injunction application expeditiously, since the issues involved in the two would be primarily the same.
30. Hence, FMAT 143 of 2025 is allowed on contest, thereby setting aside the impugned order and requesting the learned Trial Judge to take up for hearing both the applications filed by the defendants/appellants under Order XXXIX Rule 4 of the Code of Civil Procedure along with the main temporary injunction application of the plaintiffs/respondents on the next date fixed that is, on June 11, 2025 positively and to dispose of the said applications within a fortnight thereafter.
31. It is further made clear that the findings rendered in this order are all tentative, arrived at only for the purpose of deciding an

appeal from an ad interim order of injunction, and shall not be binding in any manner on the learned Trial Judge at any further stage of the injunction application and/or the suit. It will be open to the learned Trial Judge to decide all the pending applications and the suit on their own merits without being influenced unduly in any manner by the observations made above.

32. Consequentially, CAN 1 of 2025 is also disposed of.

33. There will be no order as to costs.

34. Urgent photostat certified copy of the judgment and order, if applied for, be supplied to the parties at an early date.

I agree.

(Sabyasachi Bhattacharyya, J.)

(Uday Kumar, J.)