

**IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
COMMERCIAL APPELLATE DIVISION
APPELLATE SIDE**

Before:

**The Hon'ble Justice Arijit Banerjee
And
The Hon'ble Justice Om Narayan Rai**

**AO-COM 3 of 2025
With
CAN 1 of 2025
With
AO-COM 4 of 2025**

**Rampurhat PSC Sleepers Limited
-vs.-
Union of India & Ors.**

For the Appellant : Mr. Surajit Nath Mitra, Sr. Adv.
Mr. S. Mukhopadhyay, Adv.
Mr. Supriyo Gole, Adv.

For the Respondent No. 41 : Mr. Ashok Kumar Chakraborty, ASG
Ms. Amrita Pandey, Adv.

Hearing Concluded on : 22.05.2025

Judgment on : 05.08.2025

Om Narayan Rai, J.:-

1. These two appeals arise from the same suit. AO-COM 3 of 2025 is directed against an order dated April 7, 2025 passed by the learned Commercial Court at Rajarhat, North 24-Parganas in T.S. (COM) 8 of 2025 whereby the prayer for ad interim *ex-parte* injunction made by the appellant was refused. AO-COM 4 of 2025 on the other hand assails the order dated April 11, 2025 whereby the hearing of the application for injunction was postponed and the respondents' prayer for adjournment was allowed.

2. Since we are at the ad interim stage, we are conscious that we have to restrict ourselves to the pleadings made in the plaint and the application for injunction.
3. The case run in the plaint as well as the application for injunction, in a nut shell, is as follows:-
 - i. The plaintiff/appellant is in possession of a license in respect of a piece of land admeasuring 4.31 acres by dint of a land license agreement between the Hon'ble President of India through the Divisional Railway Manager, Eastern Railway, Howrah and the appellant herein. Such agreement was entered into by the said parties upon the appellant emerging successful in a tender process initiated by the respondent Railway Authorities. The plaintiff's unit at the said land is engaged in manufacturing of products which are used exclusively by the Railways. In terms of the renewal clause in the said license agreement, the said agreement has been renewed from time to time.
 - ii. It is the plaintiff's case that despite the defendants having accepted the a sum of Rs. 13,83,641/- (Rupees Thirteen Lakh Eighty Three Thousand Six Hundred and Forty One Only) towards the land license fees payable as per the Master Circular of 2005 (hereafter "the said Policy of 2005") for the period 2022-23, the defendants have raised a demand for land license fee aggregating a sum of Rs. 47,32,812/- (Rupees Forty Seven Lakh Thirty Two Thousand Eight Hundred and Twelve Only) and a security deposit of Rs. 40,10,857.98/- (Rupees Forty Lakh Ten Thousand Eight Hundred Fifty Seven and Ninety Eight Paise Only) for the period of 2023-2024 under the provisions of the Master

Circular on “Policy for Management of Railway Land” dated October 10, 2022 (hereafter “the said Policy of 2022”).

- iii. When despite the plaintiff’s objection to the said demand the Railways persisted therewith, the plaintiff approached this Court in its writ jurisdiction by filing a writ petition being WPA 17693 of 2024 which was disposed of by an order dated July 30, 2024 thereby *inter alia* directing the competent authority to decide the dispute raised by the plaintiff in terms of clause 8 of the Policy.
- iv. Thereafter a letter dated January 20, 2025 was issued to the plaintiff informing thereby that in terms of a report of the Standing Committee constituted under clause 8 of the said Policy of 2022 (which had been approved by the defendant no. 2) land license fee for the year 2023-2024 as charged was authentic and valid. The defendant no. 2 also gave an option to the plaintiff to migrate to the “new policy regime on transparent competitive bidding process”. It is the plaintiff’s case that such a decision was taken by the defendant no. 2 without hearing the plaintiff despite the aforesaid order dated July 30, 2024 being passed by this Court in WPA 17693 of 2024.
- v. A subsequent letter dated January 24, 2025 was also issued by the defendant no. 2 seeking to clarify that “the land license of Rampurhat PSC Sleeper Ltd. is a factory/godown for manufacturer of PSC Sleeper connected with railway related work and is not a terminal/private siding/private freight terminal (PFTs)” and that license would be governed by serial no. 6 of Schedule-I of the said Policy of 2022 for the purpose of determining land license fees.

- vi. The plaintiff thereafter made a detailed representation to the defendant no. 3 with a copy thereof marked to the defendant nos. 1 and 2 on February 14, 2005 but the said representation remained unconsidered. It is the plaintiff's case that the land that has been licensed to the plaintiff for the purpose of operating a private siding and that the license fees payable by the plaintiff in respect of the said land would be governed by the said Policy of 2005 and not by the subsequent Policy of 2022. The plaintiff has further averred that the plaintiff is entitled to continue with the license over the said land as per the provisions of the said Policy of 2005 with an annual escalation of 7% from clause 7.5 of the said Policy of 2022 without any fresh calculation of license fee based on the current market value of the said land.
- vii. The plaintiff has further averred that calculation of license fee for the land licenced to the plaintiff, on the basis of the existing market value would amount to treating the plaintiff as a fresh licensee for the purpose of said Policy of 2022 and not as an existing license.
- viii. It is the further case of the plaintiff that the plaintiff has developed the land by setting up a plant for manufacturing of PSC Sleepers and the value of the said land has thus increased only due to the build-out executed by the plaintiff. It is the plaintiff's case that the defendants have refused to accept the license fees for the period April 01, 2023 to March 31, 2025 on the ground of enhancement of license fees in terms of the demand notices dated March 28, 2024 and June 20, 2024.

- ix. The plaintiff has pleaded that the plaintiff is ready and willing to pay the license fees in respect of the said land for the period 2024-2025 upon enhancement thereof @ 7% in terms of the extant Policy of 2005.
- x. The plaintiff has further pleaded that the defendants have sought to impose license fees in terms of the said Policy of 2022 based on the fresh market value of the land and the defendant nos. 1 and 2 are threatening to terminate the License Agreement subsisting in favour of the plaintiff. Feeling aggrieved by such action of the defendants, the plaintiff instituted the suit being T.S (COM) No. 8 of 2025 praying *inter alia* for the following reliefs:-

- a) *A declaration that the plaintiff's license in respect of the land admeasuring 4.31 acres vide DRM/HWH Plan No. 139 of 2004 at Mouza Ramrampur, J.L. No. 79, District – Birbhum, West Bengal, India, is governed by the defendant no. 3's Master Circular/letter bearing no. 2005/LML/18/8 dated 10.02.2005, being Annexure 'P4' hereto, and license fee thereunder is to be calculated for that of a Private Siding;*
- b) *A decree adjudging the said demand notices dated 28.03.2024 and 20.06.2024, being Annexures 'P8' and 'P9' hereto, as well as the letters dated 20.01.2025 and 24.01.2025, forming part of Annexure 'P15' and 'P16' hereto, all issued by the defendant no. 2 as void, and have the same ordered to be delivered up and cancelled;*
- c) *Decree for a sum of Rs. 13,36,331/- (Thirteen Lakh Thirty Six Thousand Three Hundred and Thirty One Only) against the defendant nos. 1 and 2 as per paragraph 28 hereinabove;*
- d) *A perpetual injunction restraining the defendant nos. 1 or 2, and each of them, their men, servants, agents or assigns from terminating the License Agreement dated 23.09.2004, being Annexure 'P2' hereto, subsisting in favour of the plaintiff;*
- e) *A perpetual injunction restraining the defendant nos. 1 or 2, and each of them, their men, servants, agents or assigns, from giving any effect and/or further effect to the purported demand notices dated 28.03.2024 and 20.06.2024, being Annexures 'P8' and 'P9' hereto, and/or the*

purported letters dated 20.01.2025 and 24.01.2025, forming part of Annexures 'P15' and 'P16' hereto;

- f) *A mandatory injunction, compelling the defendant nos. 1 and 2 to accept the land license fees in respect of the said land being land admeasuring 4.31 acres vide DRM/HWH Plan No. 139 of 2004 at Mouza Ramrampur, J.L. No. 79, District- Birbhum, West Bengal, India at the rate of Rs. 12,54,657/- (Rupees Twelve Lakh Fifty Four Thousand Six Hundred and Fifty Seven Only) for 2023-24 and thereafter, an annual increment of 7% as per the 2005 Policy;*

4. Having instituted the suit as aforesaid, the plaintiff also moved an application under Order 39 Rules 1 and 2 of the Code of Civil Procedure, 1908 (hereafter “the Code”) praying *inter alia* for the following orders:-

- a. *Temporary injunction(s) restraining the defendant nos. 1 and 2, and each of them, their men, servants, agents or assigns from terminating the License Agreement dated 23.09.2004, being Annexure 'P2' hereto, subsisting in favour of the plaintiff;*
- b. *Temporary injunction(s) restraining the defendant nos. 1 and 2, and each of them, their men, servants, agents or assigns, from giving any effect and/or further effect to the purported demand notices dated 28.03.2024 and 20.06.2024, being Annexures 'P8' and 'P9' hereto, and/or the purported letters dated 20.01.2025 and 24.01.2025, forming part of Annexures 'P15' and 'P16' hereto;*
- c. *Temporary injunction(s) compelling the defendant nos. 1 and 2 to accept the land license fees in respect of the said land being land admeasuring 4.31 acres vide DRM/HWH Plan No. 139 of 2004 at Mouza Ramrampur, J.L. No. 79, District – Birbhum, West Bengal, India at the rate of Rs. 12,54,657/- (Rupees Twelve Lakh Fifty Four Thousand Six Hundred and Fifty Seven Only) for 2023-24 and thereafter, an annual increment of 7% as per the 2005 Policy;*

5. The plaintiff pressed for *ex-parte* ad interim order of injunction before the learned Commercial Court at Rajarhat which was refused by an order dated April 7, 2025 by observing as follows:-

“The plaintiff has filed the instant suit praying for leave under Section 80(2) of the CPC contending that due to urgency to move an ex-parte ad-

interim injunction application it could not serve a pre-suit two months' notice under Section 80 of the CPC.

In view of the urgency substantiated by the submissions of the learned Advocate for the plaintiff, the leave under Section 80(2) of the CPC is granted. Accordingly, the plaintiff is permitted to institute this suit without serving any notice is required under Section 80(1) of the CPC.

Now the injunction application filed on behalf of the plaintiff/petitioner is taken up for hearing and passing necessary order.

Heard the learned Advocate for the plaintiff/petitioner.

Perused the plaint, the injunction petition, the annexure thereto and the materials on record.

Upon careful perusal of the plaint, the injunction petition, the annexures attached thereto, and the materials on record, it is observed that the plaintiff/petitioner seeks an ad-interim injunction to prevent the respondents/defendants from proceeding with certain actions alleged to be detrimental to the plaintiff's rights.

At this stage, the Court is not inclined to entertain the injunction petition on the ground that the respondents/defendants are a Government Body and as there is a clear embargo in Section 80(2) of the CPC which provides that the Court shall not grant relief in the suit, without interim or otherwise except after giving to the Government or Public Officer, as the case may be, a reasonable opportunity of showing cause in respect of the relief prayed for in the suit. As such, there is no scope of passing any ex-parte ad-interim injunction order at this stage.

In the light of the above, this Court is not inclined to pass an ad-interim order without hearing the respondents. Consequently, the application for an interim injunction under Order 39, Rules 1 and 2 of the Code of Civil Procedure filed by the plaintiff/petitioner is hereby refused at this stage.

In view of the urgency of the relief sought, there should be immediate issuance of notice and immediate service upon the defendants/respondents by service through Court and e-mail. Accordingly, issue notice upon the defendants/respondents directing them to show-cause by Friday

(11.04.2025) subject to receipt of notice as to why temporary injunction order as prayed for shall not be granted.

The defendant nos. 1 & 2 are required to be served by hard copy of notice and e-mail and the defendant no. 3 should also be served similarly. However, if the service upon the defendant no. 3 by hard copy is not complete by the date fixed it would be sufficient for the time being if the defendant no. 3 is served by e-mail only.”

6. While rejecting the plaintiff's prayer for *ex-parte* ad interim order of injunction, the defendants were also issued notice with a direction to show cause as to why temporary injunction as prayed for would not be granted. April 11, 2025 was fixed as the next date. On April 11, 2025 the defendants entered appearance and sought for time to file their written objection. The plaintiff on the other hand pressed for hearing of the injunction application. The defendants' prayer for time was allowed and the injunction petition was not heard.
7. Feeling aggrieved by the aforesaid two orders dated April 07, 2025 and April 11, 2025, the plaintiff has approached us by way of the instant appeals.
8. Since the parties are at the interim stage of the suit and all the papers which were there before the learned Court below are here before us as well, we decided to hear out the appeals themselves by consent of the parties.
9. Mr. Chakraborty learned Additional Solicitor General representing the respondents at the very outset raised a point of maintainability of the appeals. As a point of maintainability of the appeals was raised by the learned Additional Solicitor General, we proposed to hear him first before hearing Mr. Mitra, learned Senior Advocate appearing for the appellant.

- 10.** The learned Additional Solicitor General submitted that since the appeals assailed orders passed by the learned Commercial Court on an application under Order 39 Rules 1 and 2 of the Code therefore, the same required to be admitted under the provisions of Order 41 Rule 11 of the Code. The learned Additional Solicitor General invited our attention to Rule 17 of Chapter V of the Appellate Side Rules, 1966 and submitted that any appeal against an order other than those mentioned in the said Rule would require to be first admitted under Order 41 Rule 11 of the Code and until such admission is effected no order can be passed on the merits of the two appeals.
- 11.** He then took us through Section 13 of the Commercial Courts Act, 2015 (hereafter the said Act of 2015) and submitted that in terms of the said provision, appeals could be preferred only against such orders as had been enumerated under Order 43 of the Code as amended by the said Act, 2015. In support of his contention he relied on a judgment of this Court in ***Abu Taher vs. Mossammat Margina Bibi***¹.
- 12.** Mr. Chakraborty further submitted that there is no cause of action for the subject suit inasmuch as neither any notice of termination of the contract has been issued nor anything coercive has been done as yet. It was submitted that a mere notice of demand cannot constitute a cause of action for the suit.
- 13.** The learned Additional Solicitor General then contended that the subject suit in effect assails the Master Circular of 2022 (i.e. the said Policy of 2022) issued by the Railways and that since the said Master Circular has been issued in terms of the Railways Boards Act, 1905 therefore any challenge to

¹ (2003) 3 CHN 326

any act done under such Master Circular must be made before the Constitutional Court i.e. this Court under Article 226 of the Constitution of India in terms of the provision of Article 228 of the Constitution of India read with Order 27A of the Code.

- 14.** It was further submitted that the demand notices that have been impugned were issued on March 28, 2024, June 20, 2024 and January 24, 2025 but the suit has been instituted only in April 2025 which would reveal that the matter is not so urgent that the Court should pass *ex-parte* ad interim order of injunction.
- 15.** The learned Additional Solicitor General then referred to Section 41 of the Specific Relief Act and submitted that the conduct of the parties is a relevant factor in granting or refusing to grant injunction. It was further submitted that in the instant case it is evident that the plaintiff has made a delayed approach to Court and as such on the ground of delay alone injunction ought not to have been granted. In support of his submission the learned Additional Solicitor General relied on the judgment of the Hon'ble Supreme Court in the case of ***Mandali Ranganna & Ors. vs. T. Ramachandra & Ors.***². Mr. Chakraborty then relied on the judgment of the Hon'ble Supreme Court in the case of ***Shiv Kumar Chadha vs. Municipal Corporation of Delhi & Ors.***³ and submitted that in all cases where a prayer for *ex-parte* ad interim order of injunction is made a case of urgency must be made and established. It was submitted that such case is not made out here.

² (2008) 11 SCC 1

³ (1993) 3 SCC 161

16. The judgment in the case of **Joshi Technologies International Inc. vs.**

Union of India & Ors.⁴ was then relied on to show the scope of interference in matters involving adjudication of contractual rights. It was then submitted by Mr. Chakraborty that when the appellant had earlier approached this Court in its writ jurisdiction under Article 226 of the Constitution of India praying for similar relief as prayed for in the suit and the matter was remitted to the authority for consideration, it should be deemed that the Court had refused to interfere with the appellant's case and that the appellant's case today is barred by the principles of *res judicata*.

17. Relying on the judgment of the Hon'ble Supreme Court in the case of **Southern Roadways Ltd., Madurai vs. S.M. Krishnan**⁵, it was submitted that even if the plaintiff's contract is terminated the same would amount to termination of the plaintiff's agency and in such cases the plaintiff can only seek damages. It was emphasised that in terms of Sections 182, 201 and 203 of the Contract Act, 1872, the plaintiff is nothing more than an agent and mere termination of agency would not give rise to any cause of action for the purpose of grant of *ex-parte* ad-interim order of injunction.

18. The learned Additional Solicitor General took the Court through clause 14 of the land license agreement and submitted that in terms thereof, the respondents were well entitled to enhance the license fees and that since the said clause was there in the agreement itself which was binding between the parties, the plaintiff was estopped from challenging the enhancement.

19. It was further submitted by Mr. Chakraborty that in the case at hand the learned Commercial Court had not only dispensed notice under Section 80

⁴ (2015) 7 SCC 728

⁵ (1989) 4 SCC 603

of the Code but also the pre-suit mediation under Section 12A of the said Act of 2015. Relying on the provisions of Order 41 Rule 33 of the Code, Mr. Chakraborty submitted that even without preferring any cross appeal the respondents were entitled to invite the attention of the appellate Court to the issues that had been wrongly decided and that the maintainability of the suit could still be challenged by the respondents even before the appellate Court by invoking its powers under Order 41 Rule 33 of the Code. In this connection he relied on the judgment of the Hon'ble Supreme Court in the case of ***Pralhad & Ors. vs. State of Maharashtra & Anr.***⁶. Mr. Chakraborty submitted that not only the appeal but also the suit should be dismissed inasmuch as the suit was not maintainable.

20. Mr. Mitra, learned Senior Advocate appearing for the appellant submitted that since an interim order had been passed in favour of the appellant on the very first day when the appeal was pressed by the appellant, it should be deemed that the appeal stood admitted on the same day and that being so the point that the appeal was required to be admitted under Order 41 Rule 11 of the Code was no longer available to the respondents. He further submitted that in any case not hearing the appeal expressly under order 41 Rule 11 of the Code was a mere irregularity which could be condoned and could be regularised.

21. It was next submitted by Mr. Mitra that there was sufficient cause for the plaintiff to bring the action in question and for such purpose, he relied on the pleadings made in paragraphs 28 to 33 of the plaint where the plaintiff has narrated the events pertaining to the defendants' refusal to accept the

⁶ (2010) 10 SCC 458

license fees and has averred that the plaintiff had been threatened with coercive action including termination of the agreement. Mr. Mitra then took the Court through the prayers made in the plaint and submitted that the prayers would reveal that the same flowed from the causes pleaded in the plaint. He further submitted that in any case no application under Order 7 Rule 11 had yet been filed by the defendants in the suit and as such it was not open to the defendants/respondents to assail the maintainability of the suit in the present appeal.

22. It was then submitted that the plaintiff has approached the Court with due despatch and there is no delay that could disentitle the plaintiff from getting an order of injunction, as submitted by the learned Additional Solicitor General. He relied on the pleadings made in paragraphs 34 and 35 of the injunction application for such purpose.

23. He then took the Court through the order dated July 30, 2024 passed in WPA 17693 of 2024 and submitted that although the said order mandated a hearing to be given, no hearing was given by the respondent Railway Authorities and a unilateral decision has been taken to demand an exorbitant sum.

24. Mr. Mitra thereafter took the Court through clauses 2.4, 3, 4.1, 4.2 of the Railway Board's Circular on "Review of Policy on commercial licensing of Railway Land" dated August 29, 1995 and also placed clauses 3, 5, 5.1, 5.2 and 7.1 of the Policy of 2005 to show the scheme of licensing out of Railway lands. He submitted that the plaintiff is governed by the Policy of 2005 and has all along paid the land license fees in terms of the said Policy of 2005 and that the plaintiff was ready and willing to continue doing so. It was

submitted that the defendant/respondents have unilaterally imposed the terms and conditions of the Policy of 2022 although the plaintiff was not governed by the said Policy of 2022. He placed clause 2 along with its several sub-clauses in the said Policy of 2022 to buttress his contention that the said Policy was not applicable to the plaintiff. He further submitted that even in terms of the said Policy of 2022, the plaintiff being an existing licensee in respect of a private siding could not be forced to migrate to the new regime under the said Policy of 2022. Mr. Mitra cited clause 4 and clause 7.5 and its sub-clauses from the said Policy of 2022 for propping his aforesaid submission. It was submitted that even in terms of the said Policy of 2022, there could be no increase of license fees in case of a private siding dedicated to one customer. He also relied on a letter dated June 28, 2021 issued by the Assistant Engineer, Eastern Railway, Rampurhat to demonstrate that the land under possession of the plaintiff by dint of the aforesaid agreement was in fact a private siding.

25. It was further submitted by Mr. Mitra that since the Court was at the interim stage the Court should not hold a mini trial and should grant an interim order upon the plaintiff satisfying that the plaintiff has a prima facie case.

26. Mr. Mitra placed clause 3 of the land license agreement executed on September 23, 2004 and contended that the said clause would demonstrate that there was no right of termination reserved for the respondents even in the event of failure of the licensee to pay the advance license fees in terms of the said agreement.

- 27.** As regards the contention of the learned Additional Solicitor General that the plaintiff was nothing but a mere licensee, Mr. Mitra placed the first three recitals of the land license agreement executed on September 23, 2004 and contended that the expression “*the licensor had agreed to grant, transfer and demise upto the licensee a plot of land measuring approximately 4.31 acres vide DRM/HWH’s Plan No. 130 OF 2004 in the Railway premises of Rampurhat Mouza at Rampurhat*” clearly demonstrated that the plaintiff had interest in the said land which it was using under the said agreement and it was not a case of mere license as alleged.
- 28.** As regards the contention of the respondents that the learned Commercial Court erred in dispensing with the requirement of pre-suit mediation, Mr. Mitra relied on paragraph 5 of the judgment in the case of ***Yamini Manohar vs. T.K.D. Keerthi***⁷ and submitted that the provisions of Section 12A of the said Act of 2015 allow the Court to exercise discretion to discern as to whether a given case contemplated urgent relief or not and that in the case at hand such discretion had been rightly exercised by the Court. He prayed for setting aside the orders impugned and pressed for interim orders, *inter alia*, restraining the respondents from taking any coercive action.
- 29.** We have heard the learned Senior Advocates appearing for the respective parties and have considered the material on record. The following two issues have arisen for our consideration:-
- i. Whether this Court has the authority to hear commercial appeals under Order 41 Rule 11 of the Code?

⁷ (2024) 5 SCC 815

- ii. Whether the order impugned deserves to be set aside since the plaintiff/appellant was/is entitled to an *ex-parte* order of injunction?

Whether this Court has the authority to hear commercial appeals under Order 41 Rule 11 of the Code?

- 30.** Since it has been urged at the threshold that we are not authorised to hear the appeals till the time the same are admitted under Order 41 Rule 11 of the Code, we need to deal with the said point first. Mr. Mitra sought to annihilate the contention by submitting that since this Court had already passed an interim order at the threshold therefore, the appeal must be deemed to have been admitted.
- 31.** Before proceeding further we are tempted to take note of certain observations of a Division Bench of this Court in the case of **Lalit Chandra Dhar vs. Abdul Rauf & Ors.**⁸:-

“6. But does Rule 11 of Order 41 provide for admission of appeal? Does the Court, under Rule 11 decide as to whether an appeal is to be admitted or not? It appears that an impression has gained ground that a Court really admits an appeal, particularly a Second Appeal and also a First Miscellaneous Appeal, only after hearing the same under Rule 11 of Order But the impression is wholly erroneous. The appeal cannot but stand admitted at a stage anterior to its hearing under Rule 11 and the Rule only enables the Court to dismiss the appeal at an early stage without sending notice to the Lower Court and without serving notice on the respondent. As the Rule makes it irresistibly clear, what is determined in a hearing under Rule 11 is not whether the appeal is to be admitted, but whether the appeal, which cannot but already stand admitted, is to be dismissed. As the new Rule 11a, inserted by the 1976 - Amendment now makes it further clear, what is heard under Rule 11 is the appeal itself and not the question of its admission. This position would emerge with greater clarity from the relevant

⁸ AIR 1988 Cal 15

provisions of the Appellate Side Rules of this Court - Part II, Chapter V, Rule 17 and Chapter IX, Rule 79. Rule 17 (a) and Rule 79 as aforesaid dispense with any hearing under Order 41 Rule 11 of the Code in respect of appeals from Original Decrees and appeals under Workmen's Compensation Act, appeals from Orders under Article 226 of the Constitution, appeals from the decision of the Claim" Commissioner under the Indian Railway Act and appeals, from the Award of Claims Tribunal under the Motor Vehicles Act and it is provided that in respect of any such appeal the concerned Department "shall admit it and cause it to be registered and to issue to the respondent" and it is obvious that if an appeal is to be admitted only on a hearing under Rule 11 of Order 41 of the Code, such a hearing could not be dispensed with and the appeal could not be admitted without such hearing. Rule 17 (b) provides for hearing under Order 41, Rule 11 in respect of appeals from Appellate Decrees and from Orders other than those mentioned above, but clearly provides for admission of such appeal before being placed for hearing under Order 41 Rule 11, the relevant words being "shall I admit it, cause it to be registered, and posted to a Bench for hearing under Order XLI Rule 11 of Civil Procedure Code".

7. The very word may in Order 41 Rule 11 cannot but indicate that the Court may or may not hear a matter under Rule 11, and the hearing under the said Rule could not thus be made optional if the same was to be the only channel through which an appeal can be routed in. We should, therefore, have no doubt that Rule 11 does not provide for any hearing as to the admission of the appeal and we accordingly repel the contention of Mr. Mitra that if an appeal, for which leave has been granted under Section 75 (3) of the Provincial Insolvency Act, is again placed for hearing under Order 41, Rule 11, that would amount to another admission hearing and, therefore, the application of Order 41 Rule 11 should be held to be impliedly barred under Section 5 (2) of the Provincial Insolvency Act."

(Emphasis supplied by us by underlining)

32. The aforesaid observations of in the case of **Lalit Chandra Dhar** (supra) put at least two points relevant for the case at hand beyond the pale of doubt. Firstly, a hearing under Order 41 Rule 11 is not for the purpose of admission but for the purpose of ascertaining as to whether the appeal

could be dismissed without hearing the respondent and without calling for the records of the learned Trial Court and secondly, the hearing under Order 41 Rule 11 of the Code is not optional but mandatory both in terms of the Code as well as the Appellate Side Rules.

33. The Full Bench judgment in the case of **Abu Taher** (supra) has considered the judgment of **Lalit Chandra Dhar** (supra) along with others and agreed with the conclusions reached therein as regards hearing of appeals under Order 41 Rule 11 of the Code thereby ultimately settling the law on the point that all appeals directed against orders that have not been excepted under Rule 17 (b) of Chapter V of the Appellate Side Rules would be required to be first posted for hearing under Order 41 Rule 11 of the Code of Civil Procedure. The following paragraph of the said judgment deserves notice in the present context:-

“5. Having regard to the provisions of Chapter V Rule 17 of the Appellate Side Rules of this Court, we see no reason to differ with the views expressed either in Lalit Chandra Dhar's case or in Nilmoni Majumder's case (supra). It is necessary to mention that Rule 17 of Chapter V of the Appellate Side Rules provides for Admission of Appeals. Clause (a) of Rule 17 of the Appellate Side Rules indicates that in the case of Appeals from certain orders and from decrees, the appeal is required to be admitted by the officer to whom the Memorandum is presented, who shall cause the same to be registered, and, thereafter, issue notice to the respondents. However, in clause (b) of Rule 17, it has been indicated that in case of an appeal from an appellate decree or an appeal from an order, other than an appeal under the Workmen's Compensation Act, an appeal from an order under Article 226 of the Constitution, an appeal under the Indian Railways Act (4 of 1890) and an appeal under the Motor Vehicles Act (4 of 1939), the officer to whom the Memorandum is required to be presented shall admit it, cause it to be registered, and, thereafter, post it to a Bench for hearing

under Order 41 Rule 11 of the Code of Civil Procedure. In other words, an appeal not specifically excluded by clause (b) of Rule 17 of the Appellate Side Rules of this Court is required to be posted for hearing under Order 41 Rule 11 of the Code of Civil Procedure.”

(Emphasis supplied by us by underlining)

34. In the light of the above, we now have to decide as to whether we have the authority to take up the subject appeals for hearing under Order 41 Rule 11 of the Code on the day the same are first heard or on any of the days the same are heard by us because we may proceed to render our decision on the other points raised by the parties only if we find an approbating answer to the aforesaid question.

35. The instant two appeals have been filed before this Court invoking its jurisdiction under the Commercial Appellate Division constituted in terms of Section 5 of the said Act of 2015 and not by invoking the ordinary civil appellate jurisdiction of this Court. At the time when the judgments in the case of **Lalit Chandra Dhar** (supra) and the said Full Bench judgment were rendered the said Act of 2015 was not in existence. While the case of **Lalit Chandra Dhar** (supra) pertained to an appeal under Section 75(3) of the Provincial Insolvency Act, 1920 and **Abu Taher** (supra) was an appeal under Section 47 of the Guardians and Wards Act, 1890.

36. It needs to be clarified that for the purpose of effective and expeditious adjudication and disposal of statutory appeals pertaining to the Guardians and Wards Act, 1890 or even the Provincial Insolvency Act, 1920, the Hon’ble the Chief Justice of the High Court may assign/allocate hearing of such statutory appeals to a particular Bench or certain Benches. In case the Bench having determination for hearing appeals pertaining to the Guardians

and Wards Act, 1890 or Provincial Insolvency Act, 1920 does not have determination for hearing matters under Order 41 Rule 11 of the Code, the said appeals would first have to be placed before the Bench having determination for hearing under Order 41 Rule 11 of the Code and it would be only thereafter the other Bench which has determination over statutory appeals pertaining to the Guardians and Wards Act, 1890 or Provincial Insolvency Act, 1920 would be authorised to hear the same.

37. The same procedure, in our considered view, would not be applicable to the appeals filed under the Commercial Appellate Division of this Court for the reasons detailed in the following paragraphs.

38. As stated earlier, neither the Guardians and Wards Act, 1890 nor the Provincial Insolvency Act, 1920 mandates constitution of a separate division in the High Court for hearing of statutory appeals against orders passed thereunder but the said Act of 2015 clearly ordains constitution of Commercial Appellate Division in the High Court. Assignment/allocation of hearing of statutory appeals in terms of the Guardians and Wards Act, 1890 or such other Acts to a particular Bench is done by the Hon'ble the Chief Justice by dint of convention and tradition in exercise of his authority on the administrative side, since the Chief Justice is *primus inter pares* i.e. "first among the equals". For the sake of clarity on this point, we may notice the observations of the Hon'ble Supreme Court in the case of **Asok Pande vs. Supreme Court of India**⁹:-

"14. The Chartered High Courts of Allahabad, Bombay, Calcutta and Madras have a long history of over a hundred and fifty years. Each of them has marked its sesquicentennial. Many High Courts are not far behind in

⁹ (2018) 5 SCC 341

vintage. Some are of a recent origin. Over the course of their judicial history, High Courts have evolved conventions in matters governing practice and procedure. These conventions provide guidance to the Chief Justice in the allocation of work, including in the constitution of Benches. The High Courts periodically publish a roster of work under the authority of the Chief Justice. The roster indicates the constitution of Benches, Division and Single. The roster will indicate the subject-matter of the cases assigned to each Bench. Different High Courts have their own traditions in regard to the period for which the published roster will continue, until a fresh roster is notified. Individual Judges have their own strengths in terms of specialisation. The Chief Justice of the High Court has to bear in mind the area of specialisation of each Judge, while deciding upon the allocation of work. However, specialisation is one of several aspects which weigh with the Chief Justice. A newly appointed Judge may be rotated in a variety of assignments to enable the Judge to acquire expertise in diverse branches of law. Together with the need for specialisation, there is a need for Judges to have a broadbased understanding of diverse areas of law. In deciding upon the allocation of work and the constitution of Benches, Chief Justices have to determine the number of Benches which need to be assigned to a particular subject-matter keeping in view the inflow of work and arrears. The Chief Justice of the High Court will have regard to factors such as the pendency of cases in a given area, the need to dispose of the oldest cases, prioritising criminal cases where the liberty of the subject is involved and the overall strength, in terms of numbers, of the Court. Different High Courts have assigned priorities to certain categories of cases such as those involving senior citizens, convicts who are in jail and women litigants. These priorities are considered while preparing the roster. Impending retirements have to be borne in mind since the assignment given to a Judge who is due to demit office would have to be entrusted to another Bench when the vacancy arises. These are some of the considerations which are borne in mind. The Chief Justice is guided by the need to ensure the orderly functioning of the Court and the expeditious disposal of cases. The publication of the roster on the websites of the High Courts provides notice to litigants and lawyers about the distribution of judicial work under the authority of the Chief Justice. This Court was constituted in 1950. In the preparation of the roster and in the distribution of judicial work, some of the conventions which are adopted in the High Courts

are also relevant, subject to modifications having regard to institutional requirements.”

39. Insofar as appeals under the said Act of 2015 are concerned, those have to be filed before the Commercial Appellate Court under the Commercial Appellate Division that has been constituted by this Court in accordance with the legislative mandate of Section 5 of the said Act of 2015. This Court in exercise of its powers under Section 18 of the said Act of 2015 has also framed the “*High Court at Calcutta Commercial Courts Practice Directions, 2021*” (hereafter “the said Practice Directions”) for regulating the procedure for hearing commercial matters. The same were notified in the Kolkata Gazette on November 23, 2023 and came into immediate effect from the date of such notification. Part- I thereof contains provisions *inter alia* pertaining to the application of the said Practice Directions. Certain provisions thereof are relevant to the context and merit attention:-

“4). Save as otherwise provided in the Act; in the Code of Civil Procedure, 1908 (5 of 1908), as amended by the Act and in these Directions, The Rules of the High Court at Calcutta (Original Side), The Appellate Side Rules of the High Court at Calcutta, The West Bengal Civil Rules and Orders and all other Rules made by the High Court at Calcutta from time to time for regulating the procedure for the hearing of different categories of commercial disputes shall apply mutatis mutandis to the Commercial Courts, Commercial Appellate Courts, Commercial Division and Commercial Appellate Division respectively in regard to the hearing of commercial disputes of or above the Specified Value as notified by the state Government from time to time in exercise of powers conferred by Sub Section (IA) of Section 3 of the Act.

5) In case of any conflict, inconsistency or repugnancy between these Directions and The Rules of the High Court at Calcutta (Original Side) or The Appellate Side Rules of the High Court at Calcutta or The West Bengal Civil Rules and Orders or any other Rules made by the High Court at

Calcutta from time to time for regulating the procedure for the hearing of different categories of commercial disputes, the Directions herein contained shall prevail in relation to the procedure for the hearing of different categories of commercial disputes of or above the Specified Value.

6) These Directions shall, unless expressly provided otherwise, apply to all commercial disputes before the Commercial Courts and Commercial Appellate Courts respectively in the State of West Bengal as well as the Commercial Division and Commercial Appellate Division respectively in the High Court in regard to the hearing of commercial disputes of or above the Specified Value as notified by the State Government.”

40. A cumulative reading of the aforesaid provisions would make it clear that the Appellate Side Rules would apply *mutatis mutandis* to the Commercial Appellate Courts and the Commercial Appellate Division in regard to hearing of commercial matters and that in case of any conflict or inconsistency or repugnancy between the said Practice Directions and the Rules framed by this Court, the said Practice Directions shall prevail.

41. While on this, the relevant provisions of the said Practice Directions in respect of hearing of appeals may also be noticed. Part VII of the said Practice Directions contains provisions for appeals to the Commercial Appellate Courts and Commercial Appellate Division. The same provide thus:-

PART-VII

Appeals to the Commercial Appellate Courts and Commercial Appellate Division in the High Court-

29. Procedure to be followed in regard to Appeals before the Commercial Appellate Courts and Commercial Appellate Division

1) All appeals before the Commercial Appellate Court from the decree or order of a Commercial Court below the Level of a District Judge shall follow the procedure laid down in Order XLI of the Code of Civil Procedure read with the West Bengal Civil Rules and Orders.

2) *All appeals before the Commercial Appellate Division of the High Court from the decree or order of a Commercial Court at the Level of a District Judge shall follow the procedure laid down in The Appellate Side Rules of the High Court at Calcutta read with Order XLI of the Code of Civil Procedure.*

3) *All appeals before the Commercial Appellate Division of the High Court from the decree or order of the Commercial Division shall follow the procedure laid down in The Rules of the High Court at Calcutta (Original Side) read with Order XLI of the Code of Civil Procedure.*

42. Thus the appeals before the Commercial Appellate Division of this Court from a decree or order of a Commercial Court at the level of a District Judge would be regulated by the provisions of the Appellate Side Rules of the High Court at Calcutta read with Order 41 of the Code with the only exception that if there is any procedure already provided in the said Practice Directions regulating a particular aspect, the said provision would prevail over the relevant Appellate Side Rule. Since on the aspect of hearing under Order 41 Rule 11 there is nothing contrary provided in the said Practice Directions the provisions of Rule 17 of Chapter V of the Appellate Side Rules would apply to the hearing of appeals filed before this Court under the Commercial Appellate Division as well.

43. Now the question would be as to whether the appeals at hand that have been filed under the Commercial Appellate Division of this Court can be heard under Order 41 Rule 11 of the Code by a Bench different than the Bench having determination for hearing appeals from orders passed by the Commercial Courts. The answer, in the considered view of this Court, would be a resounding “NO”.

44. It needs to be remembered that the said Act of 2015 was enacted for a particular purpose. It was felt necessary by the Legislature that commercial matters should be dealt with separately by dedicated Courts upon constitution of a separate division therefor and as such a full-fledged mechanism was provided in the said Act of 2015 itself to facilitate sifting and sieving of commercial matters from the common pool of civil matters. In this context the observations made by the Hon'ble Supreme Court in the case of ***Ambalal Sarabhai Enterprises Ltd. vs. K.S. Infraspace LLP & Anr.***¹⁰ must be noticed:-

“36. A perusal of the Statement of Objects and Reasons of the Commercial Courts Act, 2015 and the various amendments to the Civil Procedure Code and insertion of new rules to the Code applicable to suits of commercial disputes show that it has been enacted for the purpose of providing an early disposal of high value commercial disputes. A purposive interpretation of the Statement of Objects and Reasons and various amendments to the Civil Procedure Code leaves no room for doubt that the provisions of the Act require to be strictly construed. If the provisions are given a liberal interpretation, the object behind constitution of Commercial Division of Courts viz. putting the matter on fast track and speedy resolution of commercial disputes, will be defeated. If we take a closer look at the Statement of Objects and Reasons, words such as “early” and “speedy” have been incorporated and reiterated. The object shall be fulfilled only if the provisions of the Act are interpreted in a narrow sense and not hampered by the usual procedural delays plaguing our traditional legal system.”

(Emphasis supplied by us by underlining)

45. In such view of the matter the provisions of the said Practice Directions would have to be interpreted in a manner such that the object of enactment of the said Act of 2015 does not get stultified in the name of following the Appellate Side Rules of this Court. If a commercial appeal is to be set down

¹⁰ (2020) 15 SCC 585

for hearing under Order 41 Rule 11 of the Code by the Bench having determination for hearing of appeals under Order 41 Rule 11 of the Code although such Bench is not a Bench under the Commercial Appellate Division, then, that would amount to doing exactly that which has been mandated to be eschewed by the said Act of 2015 by providing for constitution of a separate Commercial Appellate Division in the High Court. The commercial appeals would then be a part of the collective puddle of civil appeals heard by the said Bench under Order 41 Rule 11 of the Code which would be an antithesis to the scheme of the said Act of 2015. Having due regard to the avowed objective of the said Act of 2015, it cannot be said that a Bench which is not one under the Commercial Appellate Division of this Court would have determination for hearing of commercial appeals under Order 41 Rule 11 of the Code.

46. What is the way out then? The impasse can be easily resolved by a meaningful reading of the said Practice Directions framed by this Court. The said Practice Directions clearly provide that the Appellate Side Rules will apply *mutatis mutandis* to the Commercial Appellate Division of this Court.

47. The determination that the Bench under the Commercial Appellate Division of this Court has apropos commercial appeals is as follows:-

“ALL APPEALS AND APPLICATIONS CONNECTED THERETO UNDER COMMERCIAL COURTS, COMMERCIAL DIVISION AND COMMERCIAL APPELLATE DIVISION OF THE HIGH COURT'S ACT, 2015.”

48. There is no specific allocation/assignment of authority to hear commercial appeals under Order 41 Rule 11 of the Code to any Bench under the Commercial Appellate Division of this Court by the determination roster framed by the Hon'ble the Chief Justice. That being so the total authority to

hear commercial matters under Order 41 Rule 11 of the Code would lie with the Bench having determination for hearing appeals under the Commercial Appellate Division. This would then include the authority to hear commercial appeals under Order 41 Rule 11 of the Code as well. We can say so on the strength of the well-known maxim “*omne majus continent in se minus*” – the greater contains the lesser i.e. the greater/fuller power to hear any commercial appeal and dispose of the same would include the lesser power to hear only the Appellant under Order 41 Rule 11 of the Code and dismiss the commercial appeal without issuing notice to the respondent and without calling for the records of the learned Trial Court.

- 49.** Therefore, we may safely infer that the Bench under the Commercial Appellate Division of this Court having determination for hearing Commercial Appeals would have determination to hear such appeals under Order 41 Rule 11 of the Code as well in the absence of a roster allocating such determination for hearing commercial appeals under Order 41 Rule 11 of the Code to a Bench under the Commercial Appellate Division of this Court. The first issue is answered accordingly.

Whether the order impugned deserves to be set aside since the plaintiff/appellant was/is entitled to an ex-parte order of injunction?

- 50.** Having answered the first issue as above, we now move on to decide the other points raised by the parties. When the matter was first moved by the appellant, we had granted a limited protection since on hearing the appellant we were prima facie satisfied that there was no basis for the inflated demand for license fee by the Railways and that the balance of convenience appeared to be in favour of the plaintiff for passing a limited protective order. However,

now that we have considered the matter in some detail and parties have taken us through the documents on record it is required to be seen whether the limited interim order granted earlier can be confirmed and the learned Commercial Court's order of refusal to pass *ex-parte* ad interim order of injunction can be interfered with.

51. The plaintiff/appellant seeks an order of injunction restraining the respondents from terminating the contract and from taking steps in furtherance of the letters of demand impugned in the suit.
52. At the *ex-parte* ad interim stage the question that really needs to be answered is not merely as to whether injunction should be granted in favour of the plaintiff or not but as to whether injunction should be granted in favour of the plaintiff in the absence of the defendant or not. It is precisely for this reason that while in contested cases of temporary injunction only the salutary triad (of *prima facie* case, balance of convenience and inconvenience and irreparable loss and injury) is required to be established by the injunction seeker, at the *ex-parte* ad interim stage a quadrad i.e. the aforesaid triad with an additional fourth limb of "urgency" is required to be established by the plaintiff. The question as to whether there is such an urgency that an injunction should be granted *ex parte* has to be answered in the light of the conduct of the plaintiff. In cases where *ex-parte* ad interim orders are prayed for it becomes imperative for the Court to consider the time at which the plaintiff first had notice of the act complained of so that the making of improper order against a party in his absence is prevented and also as to whether the plaintiff had acquiesced for some time and in

such circumstances it will not grant *ex-parte* injunction; (See: **k Stanley Mutual Fund vs. Kartick Das**¹¹)

- 53.** We therefore need to test whether the plaintiff has established the aforesaid four essentials in the case at hand.
- 54.** We begin with the ground of urgency first. The plaintiff seeks an order of injunction restraining the defendants from terminating the land license agreement. Pleadings in support of urgency are there in paragraphs 34 to 36 of the application of injunction. While paragraphs 34 and 35 contain somewhat generalised pleadings as regards threats given to the plaintiff by the defendants, paragraph 36 contains a specific pleading to the following effect: -

“36. The plaintiff has learnt from reliable sources that the defendant nos. 1 and 2 are intending to act on the letters dated 20th January 2025 and 24th January 2025 and are seeking to terminate the license existing in favour of the plaintiff with the close of the present financial year 2024-25. Such termination is being threatened in furtherance of the defendants’ illegal non adherence to the terms of the 2005 circular which governs the plaintiff’s license”

- 55.** We have noticed that the plaint and the application for injunction were affirmed on April 01, 2025 i.e. almost three months after issuance of the impugned notices dated January 20, 2025 and January 24, 2025 and that too after the close of the financial year 2024-25. In fact if the matter was so urgent that the plaintiff required an *ex-parte* ad interim order of injunction then we fail to understand as to why did the plaintiff wait for about three months to approach the Court. Furthermore, when according to the plaintiff’s own averments in the plaint, the close of the Financial Year 2024-

¹¹ (1994) 4 SCC 225

2025 was to spell doom for the plaintiff then the plaintiff ought to have approached the Court at least before that time. Financial Year 2024-2025 ended on March 31, 2025 and the suit has been filed a day thereafter. The urgency pleaded at least does not support a case for an *ex-parte* ad interim order of injunction. We reiterate that at this stage we are not merely considering as to whether the plaintiff is entitled to an ad interim order of injunction or not but as to whether the plaintiff is entitled to an *ex-parte* ad interim order of injunction or not. **Shiv Kumar Chadha** (supra) cited by Mr. Chakraborty, the learned Additional Solicitor General is quite apposite to the context. Paragraph 35 of the said report may be noticed:

35. *As such whenever a court considers it necessary in the facts and circumstances of a particular case to pass an order of injunction without notice to other side, it must record the reasons for doing so and should take into consideration, while passing an order of injunction, all relevant factors, including as to how the object of granting injunction itself shall be defeated if an ex parte order is not passed. But any such ex parte order should be in force up to a particular date before which the plaintiff should be required to serve the notice on the defendant concerned. In the Supreme Court Practice 1993, Vol. 1, at page 514, reference has been made to the views of the English Courts saying:*

“Ex parte injunctions are for cases of real urgency where there has been a true impossibility of giving notice of motion....

An ex parte injunction should generally be until a certain day, usually the next motion day....”

56. Similarly in the case of **Mandali Ranganna & Ors.** (supra) the Hon’ble Supreme Court had observed as follows:

21. *While considering an application for grant of injunction, the court will not only take into consideration the basic elements in relation thereto viz. existence of a prima facie case, balance of convenience and irreparable injury, it must also take into consideration the conduct of the parties.*

- 57.** We have also noticed that there is document or letter on record whereby a threat of termination of the land license agreement has been issued to the plaintiff. We have seen that the impugned letters of demand too do not speak of any consequence of non-payment. That being so the urgency cited by the plaintiff appears more to be a ruse than reality.
- 58.** Furthermore, the notice dated January 20, 2025, which is one of the two latest notices that have been impugned in the suit, has fixed a time frame of fifteen (15) days for making payment in terms thereof or to inform the Railways whether the plaintiff was willing to migrate *“to the new policy regime on transparent bidding process through commercial department”*. The said letter ends with a request to the plaintiff to *“take necessary action as early as possible because Higher Authority is pressing hard.”* If at all the plaintiff had urgency of the nature it now projects, it ought to have approached the Court within the said period of 15 days mentioned in the said letter or at least within a reasonably proximate time frame thereafter. The plaintiff has approached the Court more than two months thereafter. No case of urgency is therefore made out by the plaintiff.
- 59.** We now move on to the next limb i.e. *prima facie* case. We have also perused the land license agreement executed on September 23, 2004. It was initially for a period upto 31.03.2005 as would be evident from the third recital of the said agreement at page 36 of the application for injunction filed before us. The agreement contains a renewal clause. It is the plaintiff's case in paragraph 7 of the plaint that the said agreement was renewed from time to time and the last of such renewal was on June 28, 2021. A letter dated June 28, 2021, whereby license fees for the period “01.04.2021 to 31.03.2022”

have been demanded by the respondents, has been relied on by the plaintiff to demonstrate renewal. The plaintiff has further asserted in paragraph 9 of the plaint that the defendants had unconditionally accepted payment of land license fees for the year 2022-2023. It has been contended in paragraph 28 of the plaint that the defendants have refused to accept payment of license fees for the period April 01, 2023 onwards. The plaintiff has then proceeded to demonstrate that such refusal is bad as the same is based on a forcible application of the non-applicable Policy of 2022 to the plaintiff, thereby unilaterally revising the licence fees upon increasing the market value of subject land.

60. Simply put, the plaintiff's contention is that the land license fees have been exorbitantly increased by relying on a Circular/ Policy that is not applicable to it. At this juncture the provision pertaining to revision of license fees in the land license agreement needs to be noticed first. clause 14 of the said agreement makes provisions therefor in the following words:-

"14. The license fee now fixed is provisional and may be revised upward at any time at the option of the Railway which licensee hereby agrees to accept. License fee will be revised time to time as per Railway Board's instruction."

61. The above-quoted clause makes it evident that it was an unconditionally agreed term of the contract that upward revision of license fee could be done at any time at the option of the Railways and further that such revision would be effected from time to time in terms of the Railway Board's instruction.

62. The said Policy of 2022, as would be evident from the covering page thereof (at page 111 of the injunction application before us), has been issued "*with the approval of the Board*" i.e. the Railway Board. It therefore satisfies the

test of a “*Railway Board’s instruction*” mentioned in the afore-quoted clause of the land license agreement between the parties, at least *prima facie*. If that be the case, an upward revision or enhancement of license fees by the Railways in terms of the said Policy of 2022, again *prima facie*, does not appear to be *per se* illegal and may not, therefore, be susceptible to a challenge of the nature thrown to it by the plaintiff. In view of the language employed in clause 14 of the land license agreement that governs the parties, *prima facie*, we don’t find any reason to concur with the plaintiff.

63. It was argued by Mr. Mitra that the even if the said Policy of 2022 was applicable to the plaintiff; the plaintiff could not be saddled with increased license fee in terms thereof inasmuch as the plaintiff was in possession of a private siding. Mr. Mitra had relied on clause 7.5 of the Policy of 2022 to argue that there would be no increase of license fees in case of private sidings dedicated to one customer. The said clause reads as follows:-

“7.5 Migration of existing lease/license/way leave permissions:

7.5.1 Existing lease/license holders of Terminals/Private Sidings/Private Freight Terminals (PFTs): All entities currently using railway land for cargo activities will continue to be governed by railway’s extant policies, i.e. annual lease/license charges @ 6% of MVL with annual escalation of 7% for the remaining lease/license period or 35 years or period as mutually decided whichever is earlier. The existing entities shall be given option to migrate to the new policy regime on transparent competitive bidding process as applicable for new cargo terminals provided there are no outstanding dues. In such cases, the right of first refusal shall be with the existing licensee/lessee. For Terminals/Private Sidings/PFTs dedicated to one customer and where competition is not possible or existing entities who do not want to avail the option as above, the annual lease charges shall remain unchanged i.e. annual lease/license charges @6% of MVL with annual escalation of 7%.

7.5.2 Existing users of way leave: All existing way leave facility users shall be able to migrate to this policy regime only after expiry of period of existing way leave agreement and payment of all dues.”

64. For the purpose of buttressing the point that the plaintiff was possessing a private siding he cited the following portion of the letter dated June 28, 2021:-

“Sub: Disposition of License Fee of Railway Land for temporary Licensing of PSC sleeper Pvt. Siding at Rampurhat under AEN/RPH for the period 01.04.2021 to 31.03.2022”

65. We have gone through the plaint and have found that the plaintiff has sought to run a case that since the plaintiff has developed the land licensed out to it on the strength of the said land license agreement, therefore the same is actually a private siding, however, that is not a position admitted by the Railways as would be evident from a series of letters issued to the plaintiff from time to time excepting the single letter dated June 28, 2021 cited by Mr. Mitra.

66. We have seen all the earlier letters written by the Railways pertaining to the said land licensed out to the plaintiff and we have found that none of them have used the expression “*Pvt. Siding*”. We have serious doubts as to whether expression “*Pvt. Siding*” has been used consciously or is the result of unconscious omission of the expression “*Ltd.*” that must follow the expression “*Pvt.*” in the name of a private limited company which the plaintiff is. In fact in the letter immediately preceding the letter dated June 28, 2021 the plaintiff has been described as “*PSC Sleepers Pvt. Ltd., Rampurhat*”.

67. Moreover, we find that the defendants have by a letter dated January 24, 2025 (Annexure P-16 at page 182 of the injunction application) clarified that “*land license of Rampurhat PSC Sleeper Ltd. is a factory/Godown for*

manufacture of PSC Sleeper connected with railway work it is not a Terminal/Private Siding/Private Freight Terminal.”

- 68.** Mr. Mitra had further relied on clause 4 of the said Policy of 2022 to argue that market value of land would only be that which was prevalent at the time of execution of the agreement, if the same was available. Indeed the said clause says so but we are afraid the same may not apply to the plaintiff inasmuch as the said clause refers to “*lease agreement*” and the agreement that governs the parties before us is a “*Land License Agreement*”. For a proper appreciation of the said clause, the same is extracted herein below:-

“4 Market Value of land

4.1 Market Value of railway land (MVL) shall be the prevalent circle rate/ready reckoner rate/guidance value of the railway land at the time of execution of the lease agreement, if available, otherwise prevalent circle rate/ready reckoner rate/guidance value of surrounding land for similar classifications/activities shall be considered. For example, if surrounding land is classified as industrial use, then industrial rate shall be used.

Note: *In case the notified circle rates of the current year is not available then last available circle rates/ready reckoner rate/guidance value as notified by revenue authority or as decided by District Revenue Authorities shall be considered.*

4.2 For cargo terminals, industrial rates, if specified in that State shall be considered. If not specified, then any other rate depending upon use of surrounding land as specified by State/Revenue office shall only be considered.

4.3 In case of cargo terminals, if logistics industry is given a special status and discount is given in a state, then railways shall also give same discount in that state.”

Further, we have also noticed Clause 7.4 of the said Policy of 2022 which provides that in case of renewal of “license/lease/way leave”, the market value prevalent at the time of renewal shall be considered for deciding the charges. This is *prima facie* against the plaintiff.

69. We are conscious that Mr. Mitra had taken us through the said agreement and had shown us the portion where it has been written that the “*the licensor has AGREED TO grant, transfer and demise unto the licensee a plot of land*” to contend that the grant was in effect a lease and not a license. Law is very well settled on this score that mere use of the words appropriate to the creation of a lease will not preclude the agreement operating as a licence and that the crucial test in each case is whether the instrument is intended to create or not to create an interest in the property which is the subject-matter of the agreement. **(See: *Sohan Lal Naraindas vs. Laxmidas Raghunath Gadit*¹²).**

70. We have noticed that the agreement is neither registered nor sufficiently stamped (the agreement bears two Special Adhesive Stamps of Rs.5 each aggregating to Rs.10/-). The agreement indicated payment of yearly license fees. Even if the plaintiff's assertion of the grant being in the nature of lease is accepted at face value and the license fees is treated as lease rent for the time being, then also the agreement between the parties (i.e. the land license agreement) being unregistered and insufficiently stamped, *prima facie* lacks the basic credential for it to be termed as one that has effected any kind of transfer of interest in terms of the relevant provisions of the Transfer of Property Act, 1882 which makes it mandatory for any transfer of a property in the nature of a lease either from year to year or for a term exceeding one year or that which reserves an yearly rent to be made only by a registered instrument. We, however, cannot decide that issue now inasmuch as the

¹² (1971) 1 SCC 276

same can only be done after a full-fledged trial on evidence and as submitted by Mr. Mitra, we cannot, at this stage, hold a mini trial.

- 71.** Be that as it may, at least *prima facie* we do not find any reason to hold that the plaintiff is entitled to any *ex-parte* ad interim order of injunction as prayed for on the case run by it.
- 72.** Turning to the other contention of the learned Additional Solicitor General as regards the maintainability of the suit on the ground that notice under Section 80 of the Code and pre-suit mediation under Section 12 A of the said Act of 2015 ought not to have been dispensed with, we do not deem it fit to finally decide the same in this appeal although, we are *prima facie* of the view that in the wake of the fact that the notice dated January 20, 2025 (which is one of the two latest notices that have been impugned in the suit), had fixed a time frame of fifteen (15) days for making payment in terms thereof and the plaintiff has approached the Court more than two months thereafter, there was no good reason to dispense with the mandatory requirements of the provisions of section 80 of the Code and section 12 A of the said act of 2015. We however at this stage cannot dismiss the suit itself holding the same to be not maintainable notwithstanding the provisions of Order 41 Rule 33 of the Code being pressed by the learned Additional Solicitor General for such purpose because, the provisions of Order 41 Rule 33 of the Code, in our considered view, cannot be pressed into service to claim a relief greater than the expanse of the interim application before the learned Commercial Court.
- 73.** The judgment of the Hon'ble Supreme Court in the case of ***Pralhad & Ors.*** (supra) cited by the learned Additional Solicitor General in fact supports our

view that we can only do that what the learned Trial Court (learned Commercial Court) could have done while dealing with an application for injunction, if the case so required. In this regard paragraph 18 of the said judgment may be noticed:

18. The provision of Order 41 Rule 33 CPC is clearly an enabling provision, whereby the appellate court is empowered to pass any decree or make any order which ought to have been passed or made, and to pass or make such further or other decree or order as the case may require. Therefore, the power is very wide and in this enabling provision, the crucial words are that the appellate court is empowered to pass any order which ought to have been made as the case may require. The expression “order ought to have been made” would obviously mean an order which justice of the case requires to be made. This is made clear from the expression used in the said Rule by saying “the court may pass such further or other order as the case may require”. This expression “case” would mean the justice of the case. Of course, this power cannot be exercised ignoring a legal interdict or a prohibition clamped by law.

74. At the interim stage or while considering an application for grant of interim order, the Commercial Court could not have dismissed the suit itself, even if the suit was not maintainable, although it would well be entitled to reject the prayer for injunction citing the non-maintainability of the suit as a ground therefor. (See: ***Asma Lateef & Anr. vs. Shabbir Ahmad & Ors.***¹³ and ***Mahendra Magruram Gupta & Anr. vs. Rajdai Shaw & Ors.***¹⁴)

75. It is settled law that the scope of an appeal against an *ex-parte* ad interim order of injunction is limited only to the examination as to whether the order under appeal is correct or not. While examining an appeal from an *ex-parte* ad interim order of injunction, the appellate Court would in fact be an appellate Court at the interim stage only and as such the appellate Court

¹³ (2024) 4 SCC 696

¹⁴ 2025 SCC OnLine SC 1068

would also not be entitled to dismiss the suit itself, although it will very well be entitled to reject the prayer for injunction or vacate an order of injunction citing the non-maintainability of the suit as a ground therefor.

76.As regards the point raised on behalf of the Respondents that the suit is not maintainable since the same in effect lays challenge to the said Policy of 2022 we, *prima facie*, do not find such submission to be meritorious. It is apparent from the prayers made in the plaint as well as the averments made therein that the said Policy of 2022 has not been challenged. In such view of the matter the arguments based on Article 228 of the Constitution of India are not being dealt with. The decision in the case of **Joshi Technologies International Inc.** (supra) does not, in our considered view, apply to the facts of the present case, inasmuch as the same pertains to the scope of judicial review under Article 226 of the Constitution of India. The case of **Southern Roadways Ltd., Madurai** (supra) is an authority for the proposition that an agent who receives property or money from or for his principal obtains no interest for himself in the property and that under law revocation of agency by the principal immediately terminates the agent's actual authority to act for the principal unless the agent's authority is coupled with an interest as envisaged under Section 202 of the Indian Contract Act, 1872 in which case the agent could claim compensation if his case falls under Section 205 of the said Act of 1872.

77.The case of **Yamini Manohar** (supra) had been cited by the appellant to argue that no application was required to be filed to seek dispensation of pre-suit mediation under section 12A of the Act of 2015 and that the Court

had discretion to grant the same. We are bound by such observation but the same does not in any manner further the plaintiff's case.

78. We, therefore, find no reason to differ with the conclusion reached in the order impugned. AO-COM 3 along with CAN 1 of 2025 and AO-COM 4 of 2025 stand dismissed. We, however, make it clear that since our findings in this order are all *prima facie* and tentative and since the same have been reached only for the purpose of deciding the appeal against the refusal to pass *ex-parte* ad interim order of injunction therefore the same shall not be binding on the learned Commercial Court while deciding the injunction application and/or the suit. In other words, the learned Commercial Court will be free to decide the pending injunction application as well as the suit on their own merits without being influenced in any manner by the observations made hereinabove.

79. Urgent photostat certified copy of this judgment, if applied for, be supplied to the parties upon compliance of all formalities.

I agree.

(Arijit Banerjee, J.)

(Om Narayan Rai, J.)