

**FMAT 207 of 2025
With
I.A. No. CAN 1 of 2025**

**Boon Realtors Private Limited
Vs.
Julien Educational Trust & Ors.**

Mr. Saptangshu Basu, Sr. Adv.
Mr. Sagar Bandopadhyay, Sr. Adv.
Mr. Amit Kr. Nag, Adv.
Mr. Partha Banerjee, Adv.
Ms. Rangabati Ray, Adv.

... for the Appellant

Mr. Krishnaraj Thakker, Sr. Adv.
Mr. Siddhartha Chatterjee, Adv.
Mr. Shameek Ray, Adv.

... for the Respondent No. 1

Mr. Siddhant Makkar, Adv.
Mr. Piyush Kumar, Adv.

...for the Respondent No. 2 & 3

An order passed by the Civil/(Senior Division) 4th Court at Alipur, South 24 Paraganas dated May 21, 2025, in Title Suit No. 744 of 2025, is under challenge in the instant appeal.

The appellant is aggrieved that an ex parte ad interim order of maintaining status quo has been granted by the Court allegedly without due adherence to the statutory provisions as well as the settled principles of law, by dint of the judicial pronouncements.

Mr. Basu, learned Senior Counsel has appeared for the appellant. Mr. Basu has submitted that with reference to the prayer of the

respondent, who is the plaintiff before the learned Trial Court in Title Suit No. 744 of 2024, the impugned order which considered the respondent/plaintiff as the tenant could not be considered in aid of the suit. He says that in the suit as above, the respondent plaintiff has prayed for a decree declaring the sale certificate dated June 30, 2021 issued by the respondent no. 2/defendant no. 1, in favour of the appellant/defendant no. 2 and the registered deed of sale dated October 8, 2021 as illegal and void.

Since the issue of tenancy is not related with the suit in the impugned ad interim order, the Court has considered only extraneous factors while passing the same, he says.

It has further been submitted that a civil suit is barred under Section 34 of the SARFAESI Act and hence the suit by the respondent/plaintiff before the learned Trial Court would not be maintainable.

So far as the allegations of fraud committed upon the respondent/plaintiff as made in the plaint in Title Suit No. 744 of 2025 are concerned, Mr. Basu, learned Senior counsel is of the opinion that those are not any specific allegation of fraud but only some baseless allegations as regards violation of the statutory provisions by the present appellant.

Mr. Basu, learned Senior Counsel has further submitted that the same Court in an earlier suit filed by the appellant, has directed the respondent/plaintiff not to disturb the peaceful possession of the appellant. Record has revealed that the said order of the Court is under challenge before this Court and not stayed by this Court. According to the appellant, the impugned order as challenged in this appeal, is in stark contradiction to the earlier order passed by the same Court with respect to the self-same suit property, hence cannot stand in the eye of law.

Lastly, Mr. Basu, learned Senior Counsel has forcefully argued that according to the law settled as on date, the learned Trial Court should have been very cautious before proceeding to pass an ex parte ad interim order and unless a specific and pressing circumstance is found and considered by the same, no application under Order 39, Rule 1 and 2 should have been heard and decided by the Court without giving notice to the appellant/defendant in the suit.

In support of his entire argument as above, Mr. Basu, learned Senior Counsel has relied on the following judgments :-

- i) *Calcutta Corporation Club Ltd. Vs. Bhanwarlal Bhandari & Ors. [FMA No. 214 of 2003]***
- ii) *Electrosteel Castings Limited Vs. UV Asset Reconstruction Company Limited and Others* reported in (2022) 2 SCC**

iii) Shiv Kumar Chadha Vs. Municipal Corporation of Delhi and Others
reported in **(1993) 3 SCC 161**

Mr. Krishnaraj Thakker, learned Senior Counsel has appeared for the respondent/plaintiff. So far as the contentions and prayer of the appellant in this appeal, Mr. Thakker has raised strong objection as to the same. He has submitted that the learned Trial Court in the impugned order dated May 21, 2025 has judiciously and equitably balanced the respective positions and circumstances of the parties. It has passed an order of interim status quo by the parties concerned which is a most justified order in view of the facts and circumstances of the case, Mr. Thakker, learned Senior Counsel has submitted.

He has submitted further that Section 34 of the SARFAESI Act is not an absolute bar for a civil suit to be filed by a person particularly when he may come up with the allegations of fraud against the defendants in the suit. In this case, according to Mr. Thakker, learned Senior Counsel, there has been specific allegations of fraud being committed by the Bank in collusion with the present appellant. In this regard, Mr. Thakker, learned Senior Counsel has pointed out to the sale certificate and has stated that collusively and fraudulently the money deposit by his client has been returned and the sale was made effected by publishing notice very secretly, through an unknown newspaper and not at all through wide circulation.

Further, he has submitted that excepting the Court being satisfied with any kind of arbitrariness or perversity in the impugned order or the finding that the learned Trial Court has ignored the settled principles of law regulating grant or refusal of interlocutory injunctions, no interference as to the impugned order may be made at present.

Mr. Thakker, learned Senior Counsel for the respondent/plaintiff has relied on the following judgments in support of his argument:

- i) *Mardia Chemicals Ltd. and Others Vs. Union of India and Others* reported in (2004) 4 SCC 311**
- ii) *Shyam Sel and Power Limited and Another Vs. Shyam Steel Industries Limited* reported in (2023) 1 SCC 634**
- iii) *Robust Hotels Private Limited and Others Vs. EIH Limited and Others* reported in (2017) 1 SCC 622**

We have heard the respective arguments of the parties and considered the record. It appears that the appellant is a purchaser of the demised premises by dint of the sale deed dated October 8, 2021. The deed of sale as above, was preceded with the sale certificate which mentions as follows:-

"The undersigned acknowledge the receipt in full of Rs.8,47,41,990/- (Rupees Eight Crore Forty Seven Lakh forty-one Thousand Nine Hundred and Ninety only) towards sale consideration and handed over the delivery and possession of the Scheduled property. The property has been sold under "As is where is", "As is what is" "Whatever there is" basis as per SARFAESI Act 2002."

The respondent/plaintiff being admittedly the tenant of the demised premises,

claims that the suit land was symbolically handed over to the appellant/defendant by dint of the said sale deed and the possession thereof still lies with the respondent/plaintiff who have been a tenant thereof from an earlier period of time. It is apparent from records that the land has been handed over to the purchaser “as is where is”, “as is what is”, “whatever there is” basis. Therefore, the Court is of the opinion that the appellant has been handed over possession only symbolically in the above terms in the sale certificate as the fact of the respondent being in possession over there, from a date earlier from the sale certificate or deed of sale is not under challenge in this appeal.

The appellants have strong objection as regards this for the reason of the following narration in sale certificate:

“The sale of the Scheduled property was made free from all encumbrances known to the Secured Creditor.”

It is submitted that the self-same sale certificate has directed the sale of the scheduled property to be made free from all encumbrances known to the secured creditor.

The court opines that the scheduled property being sold free from all encumbrances is a clause subject to what has been mentioned in the earlier paragraph of the sale certificate as quoted above. Otherwise, if the quoted paragraph/lines as above are read disjunctively, the same would render the sale certificate itself to be self-contradictory and inexecutable.

On perusal of the affidavit submitted by the respondent/plaintiff, the Court is of the opinion that a specific case of fraud and collusion has been made against the appellant in the suit. In this regard, and on the basis of the record, the submissions made by Mr. Thakker, cannot be ignored. In such circumstances, the Court cannot also ignore the law settled by various judicial pronouncements of the Apex Court and other Constitutional Courts that Section 34 of the SARFAESI Act would not be a complete bar as regards a suit with respect to a property to be maintainable before the Civil Court, in view of the fraud pleaded therein.

In such circumstances, the Court is of the opinion that the impugned order may not instantaneously be interfered with. Rather the Court is inclined to direct the learned Trial Court to conclude the hearing as regards the application of the respondent/plaintiff under Order 39, Rule 1 and 2, C.P.C., in presence of both the parties, positively within a period of four weeks from the date of communication of copy of this order, without granting any unnecessary adjournment to any of them.

With the direction as above, the instant appeal and application are disposed of.

(Rai Chattopadhyay, J.)

(Apurba Sinha Ray, J.)