

D/L  
Item No. 7  
31.07.2025  
KOLE  
**266311**

**FMAT 246 of 2025  
With  
CAN 1 of 2025  
With  
CAN 2 of 2025**

**Skynet Tradecom Pvt. Ltd. & Anr.  
-Vs.-  
VIR BHAN Goel & Sons (H U F)**

*Mr. Aniruddha Chatterjee,  
Ms. Arpita Saha,  
Ms. K. Mukherjee,*

*...for the appellants.*

*Mr. Jaydeb Kr. Das,*

*...for the Caveator.*

By consent of the parties, the appeal and the connected applications are taken up together for hearing.

This appeal is directed against an order dated May 22, 2025, passed by the learned 12<sup>th</sup> Bench of City Civil Court at Calcutta in TS No. 1512 of 2024.

It appears that the respondent herein being the plaintiff, approached the learned Trial Court for an *ex parte ad interim* order of injunction to restrain the appellants herein from carrying demolition and/or construction activities on the suit premises. The order of *ex parte ad interim* injunction was refused by the learned Trial Court on September 11, 2024. The learned Trial Judge after recording the submission of the plaintiff observed that in the learned Judge's considered view "the other side is necessary to be heard before passing of any order on temporary injunction application". Notice was issued and the matter was made returnable on January 30, 2025.

On the returnable date, i.e., on January 30, 2025, it appears that the defendants in the suit being the present appellants did not appear before the learned Trial Court. The learned Trial Judge observed that the defendants did not appear in spite of good service as per the postal track report. The learned Judge directed that “henceforth the suit shall proceed *ex parte* against the defendants”. June 3, 2025 was fixed as the date for *ex parte* hearing of the injunction application as well as the suit.

It appears that on May 22, 2025, the plaintiff filed a petition under Section 151 of the Code of Civil Procedure and prayed for *ad interim* injunction restraining the defendants and their men, agents etc. from changing the nature and character of the suit property “until hearing of cardinal injunction application as well as the suit”. The learned Trial Judge by the impugned order allowed the application under Section 151 as well as the application under Order 39 Rules 1 and 2, *ex parte*, by restraining the defendants and their men, agents, etc. from changing “the nature and character of the suit by way of construction after demolition of the existing building and/or in addition and/or alternation of the suit property and to maintain *status quo* till the next date from now”. August 22, 2025 has been fixed as the date for *ex parte* hearing.

Being aggrieved, the defendants have come up by way of this appeal.

We have heard learned Counsel for the parties.

Mr. Chatterjee, learned Senior Advocate, appearing for the appellants says that the plaintiff is seeking to rely on a purported agreement of the year 2010. After 14 years the plaintiff has approached the Court. The suit itself may not be maintainable since there is no prayer for specific performance of the agreement. Only declaratory relief has been claimed. We are not inclined to go into those issues at this stage.

Learned Advocate for the respondent/plaintiff says that the defendants chose not to appear before the learned Trial Court on January 30, 2025, in spite of having received notice of the proceedings. This is disputed by Mr. Chatterjee, who says that the appellants did not receive any notice in fact.

Be that as it may, we find several irregularities in the order impugned. Firstly, we do not understand as to why suddenly the matter was put up on May 22, 2025 when the matter was fixed for June 3, 2025. Secondly, we also do not appreciate as to why an application under Section 151 of the Code was considered by the learned Trial Judge when the plaintiff's application under Order 39 Rules 1 and 2 of the Code was on record. We have our doubts as to whether Section 151 of the Code can be invoked when there are specific provisions in the Code for exercising a power. Thirdly, the learned Trial Judge has noted the plaintiff's case in great details and has also noted the principles of law governing grant of injunction. However, the order does not mention as to why an *ex parte* order was immediately required to be passed or how the principles of law relating to grant of an

order of injunction, are applicable to the facts of the present case. In effect, the order is an unreasoned one.

In view of the aforesaid, we set aside the order under appeal. The learned Trial Court shall decide the plaintiff's application afresh upon hearing both the sides. We direct the learned Trial Court to hear out the plaintiff's injunction application on August 5, 2025. This order will be immediately communicated by the office of the learned Registrar General to the learned Trial Court.

The defendants in the suit will be at liberty to file their written objection to the injunction application by August 4, 2025 with copy to learned Advocate for the plaintiffs.

The learned Trial Court shall decide the plaintiff's injunction application in accordance with law without being influenced by any observation made in this order.

The appeal and the connected applications are, accordingly, disposed of.

Urgent photostat certified copy of this order be supplied to the parties, if applied for, as early as possible.

**(Arijit Banerjee, J.)**

**(Om Narayan Rai, J.)**