

25.8.2025
SI No.29
Court No.16
SB

F.M.A. 1266 of 2025
CAN 1 of 2025

Association of Architects Builders Interior Designers
and Allied Professionals
Vs.
Ajit Kumar Jain & Ors.

Mr. Rachit Lakhmani
Mr. Nikunj Berlia
Mrs. Urvashi Jain ... for the appellants.

1. We have heard the learned counsel appearing on behalf of the appellants.
2. It appears to be an internal dispute between the association and its ex-office bearers. It is alleged that defendant nos. 1 to 3 who were the President, Secretary and Treasurer have embezzled the funds and have acted beyond their authority that had caused damage to the plaintiff association.
3. The learned single judge refused to pass any ad interim order taking into consideration that there was no contemporaneous complaint lodged against the said defendants for criminal misappropriation of the property.
4. Learned counsel appearing on behalf of the appellant submits that the test applied by the learned Trial Court in refusing to pass ad interim order of injunction is erroneous as merely because the plaintiff has not lodged any criminal complaint would not be a decisive factor in deciding an application for injunction if the circumstances justify for passing such an order.

5. It is true that merely because no criminal complaint has been filed for misappropriation of fund, the ad interim order may be refused but for an injunction any money claim of this nature, in our view requires consideration upon exchange of affidavits unless the Court finds an unimpeachable evidence at the ad interim stage and feels that in the interest of justice some protection is necessary for the plaintiffs.
6. The learned counsel for the appellant is unable to inform us with regard to the result of the proceeding dated 10.6.2025. However, in the event the plaint and injunction petition has not been served upon the respondents, the plaintiff shall immediately serve a copy of the plaint along with the injunction petition upon the respondents and the respondents shall file their affidavit-in-opposition to such injunction application within two weeks from date of service and reply thereto, if any shall be filed preferably within a week thereafter.
7. The appellant shall be at liberty to mention the matter before the learned Trial Court for expeditious disposal of the injunction application upon copies being served upon the respondents in terms of this order.
8. In the event, the respondents in spite of service fail to file any affidavit, it would be open for the appellant to renew the prayer for interim order before the learned Trial Court.
9. The appeal and the application are disposed of.

10. While deciding the matter afresh, the learned Trial Court shall not be influenced by the observation made in the earlier order.

(Soumen Sen, J.)

(Biswaroop Chowdhury, J.)