

D/L.6.
November 11, 2025.
MNS.

FMAT No. 288 of 2025
+
CAN 1 of 2025

Gobindapur Sephali Samaj Seba Samity
and others
Vs.
Gobindapur Sephali Samaj Seba Samity
and others

Mr. Asish Chandra Bagchi, Sr. Adv.,
Mr. Amal Saha,
Ms. Madhumati Patra,
Mr. Sauradeep Dutta

... for the appellants.

Mr. Saptanshu Basu, Sr. Adv.,
Mr. Gaurav Purkayastha,
Ms. Sushmita Choudhury

...for the respondent nos. 1 to 3.

1. We find from the certified copy of the impugned order that the report of the Additional Stamp Reporter, to the effect that the appeal is out of time, is erroneous.
2. Accordingly, we take up the appeal for hearing under Order XLI Rule 11 of the Code of Civil Procedure.
3. The present appeal has been preferred against an order whereby the plaintiffs/appellants' application under Order XXXIX Rules 1 and 2 of the Code filed in connection with their suit has been dismissed on contest.
4. The suit has been filed, *inter alia*, for declaration and injunction, also seeking relief under Section 92 of the Code.

5. The allegation of the plaintiffs in the suit is that despite the plaintiffs being the donors and founder members of the concerned Society, they were ousted from ingress and egress to the Society as long back as from February 7, 2024.

6. Learned senior counsel appearing for the appellants also argues that the reliefs under Order XXXIX Rules 1 and 2 of the Code are legal reliefs and not merely equitable reliefs and as such, the learned trial Judge acted contrary to law in holding that due to the delay in filing the suit, the plaintiffs are not entitled to injunction.

7. Learned senior counsel further points out that the trial court observed that it is totally in the dark about the activities of the Society and its administration since February 6, 2025 and a person who had kept quiet for a long time would not be entitled to get an order of injunction.

8. However, it is argued that such premise is also contrary to law, since in a suit under Section 92 of the Code, it is the duty of the Court, as the guardian of the property of the concerned Society, to enquire into and obtain materials as to the whereabouts of the functioning of the same.

9. Learned senior counsel further argues that one of the appellants is entitled to reinstatement in the post of the Secretary from which he was illegally ousted.

10. After a perusal of the impugned order, we do not find any illegality or irregularity in such order.

11. Insofar as the argument of the appellants that the court is one of law and not of equity under Order XXXIX Rules 1 and 2 of the Code, we are unable to agree with such contention.

12. Although Order XXXIX Rules 1 and 2 of the Code define the contours of the procedure in grant of injunction and the parameters thereof broadly, at the end of the day, injunction is definitely an equitable relief and not a matter of a legal right available merely for the asking.

13. The court is definitely entitled to look into the delay, since delay defeats equity.

14. In the present case, admittedly the plaintiffs were ousted from the property of the Society from February 6, 2024 but filed the suit only on March 29, 2025, that is, after a clear year from being so ousted.

15. Thus, we are unable to convince ourselves that there would be any irreparable injury in the event the temporary injunction sought for by reintroducing the plaintiffs into the property of the Society is not granted or that the balance of convenience and inconvenience is in favour of grant of injunction.

16. That apart, we also find that it is the plaintiffs' prerogative, as *dominus litis*, to bring before the court all materials to substantiate their allegations to justify an order of injunction.

17. In the absence of the same in the present case, we are of the opinion that the learned trial Judge was justified

in passing the impugned order of dismissal of the injunction application.

18. Moreover, it is well-settled that the appellate court does not interfere if discretion has been used judicially by the trial Court. In the present case, merely because a separate view might have been possible; it is not for the appellate court to interfere with the impugned order.

19. In view of the above, FMAT No. 288 of 2025 is dismissed under Order XLI Rule 11 of the Code of Civil Procedure.

20. CAN 1 of 2025 is also dismissed accordingly.

21. It is made clear that none of the above observations are conclusive for the purpose of the suit and it will be open to the learned trial Judge to decide all issues in accordance with law at the time of trial of the suit without being prejudiced unduly in any manner by any of the above observations.

22. There will be no order as to costs.

(Supratim Bhattacharya, J.) (Sabyasachi Bhattacharyya, J.)