

AD -15
Ct No.16
24.11.2025
(SSS)

FMAT No. 420 of 2025
with
CAN 1 of 2025
with
CAN 2 of 2025

Matiur Rahman
Vs.
ICICI Bank Limited

Mr. Jishnu Chowdhury, Ld. Snr. Adv.,
Mr. Soumyadeb Sinha,
Ms. Suranjana Chatterjee,
Ms. Sreeja Mukherjee, Advs.
.....For the appellant.

Mr. Arindam Mukherjee, Snr. Adv.
Ms. Soni Ojha, Adv.
....For the respondent.

Mr. Abhrajit Mitra, Snr. Adv.,
Mr. Sarvapriya Mukherjee,
Mr. Barnik Ghosh, Advs.
.....For the intervenor.

1. Affidavit of service filed today be kept on record.
2. The appeal is admitted, since it involves questions of fact as well as law, for being heard on the grounds taken in the memorandum of appeal.
3. On consent of both parties, the appeal itself is taken up for disposal along with the connected application.
4. The present appeal arises out of an order whereby the learned Trial Judge postponed the hearing of an application under Order XXII Rule

10 of the Code of Civil Procedure as well as, in a deemed manner, refused to grant ad-interim injunction on an application filed by the plaintiff/appellant for injunction against the proposed added parties. Although the latter application was captioned as one under Sections 94 and 151 of the Code of Civil Procedure, in substance, the power of the court invoked by the said application was under Order XXXIX Rules 1 and 2 and hence, we entertain the appeal.

5. The grievance of the appellant, as ventilated by learned senior counsel appearing for the appellant, is as follows:

6. The appellant filed a suit for specific performance of a contract against the defendant/respondent.

7. During pendency of the suit, it is alleged that the subject property of the agreement was transferred by the defendant/respondent to a third party, who is also represented before us today in the capacity of intervenor.

8. Learned senior counsel appearing for the appellant argues that the application under Order XXII Rule 10 ought to have been allowed as a matter of course in view of there being a transfer *lis pendens*. However, the learned Trial Judge, in the impugned order, arrived at certain observations which might adversely prejudice the

interests of the plaintiff inasmuch as it was *inter alia* held that unless any decision is arrived at as to the legal enforcement of an agreement for sale which has been sought to be specifically enforced, there cannot be any such conclusion to be made that the plaintiff has already acquired any substantive right. It was also observed that under such circumstances, there is no necessity in all cases to implead any subsequent purchaser.

9. It is argued that the said observations are not legally tenable.

10. The contentions of the appellant are disputed by learned senior counsel appearing for the defendant/respondent and the intervenor, who is a proposed added party in the suit, respectively. However, upon hearing learned counsel for the parties, we are of the opinion that it would be premature at this stage for this court to comment either way on the outcome of the pending applications.

11. Since till date no ad-interim injunction has been granted against the original defendant itself, albeit on the ground that since there was a caveat, hearing is going on, we are of the opinion that it would also be premature to grant an injunction against the proposed substituted defendant, as the latter claims its rights through

the original defendant against whom at present no injunction is subsisting.

12. Be that as it may, since extreme urgency has been pleaded by the plaintiff/appellant, it would enure to the benefit of all in the event the pending original injunction application as well as the subsequent injunction application filed in respect of the proposed added defendants are heard together along with the application under Order XXII Rule 10 of the Code of Civil Procedure expeditiously.

13. On the prayer of learned senior counsel appearing for the appellant, we also grant liberty to the plaintiff/appellant to file an application for amendment to the plaint within three days from date. If such an application is filed, the learned Trial Judge shall permit a fortnights' time to the respondent and the proposed added defendant to file written objections thereto. Written objections to both the injunction applications, if not already filed, shall also be filed within the said period of a fortnight, commencing three days hereafter.

14. The learned Trial Judge shall take up for hearing together and dispose of all the three applications, being the original application under Order XXXIX Rules 1 and 2, the second injunction application, the application for addition of parties/substitution under Order XXII Rule 10,

alternatively Order I Rule 10 of the Code of Civil Procedure, along with the amendment application, if any filed by the plaintiff/appellant, as expeditiously thereafter as possible, positively before the closing of the trial court for the upcoming winter vacation.

15. We make it abundantly clear that the merits of the matter, or the application for amendment which is to be filed, have not been gone into by this court in any manner whatsoever. We further clarify that the observations made in the impugned order were of a tentative nature and the learned Trial Judge shall not be bound by the said observations at any subsequent stage of the proceeding, either at the juncture of disposal of the above applications or the suit itself.

16. Since any comment, either way, on the merits of the matter or on the merits of the said observations by us might prejudice or influence the learned Trial Judge at later stages of the suit, we deliberately desist from doing so by keeping it open to the learned Trial Judge to decide all pending applications and the proposed amendment application, if filed, as well as the suit without being influenced in any manner by the said observations.

17. In the light of the above observations, FMAT 420 of 2025 is disposed of without interfering with

the impugned order dated August 29, 2025 passed by the learned Civil Judge (Senior Division), Second Court at Alipore, District – South 24 Parganas in Title Suit No. 273 of 2024, but in terms of the directions given above.

18. CAN 1 of 2025 and CAN 2 of 2025 are disposed of consequentially.

19. Copies of all the applications, if not served, shall be circulated amongst the unserved parties by tomorrow i.e. November 25, 2025.

(Sabyasachi Bhattacharyya, J.)

(Supratim Bhattacharya, J.)