

24th November,
2025
(AK)
16-17

F.M.A.T 433 of 2025
IA No: CAN 1 of 2025
CAN 2 of 2025

Poonam Mali
VS
Burrabazar Fee Parking Co-operative Society Limited and
others

With

F.M.A.T 462 of 2025
IA No: CAN 1 of 2025

Poonam Mali
VS
Dipak Sonkar

Mr. Ranajit Chatterjee
Mr. Aniruddha Mitra
....for the appellant.

Mr. Abir Sarkar
Ms. Pinky Dey
...for the respondent no.1.

Mr. Aniruddha Chatterjee
Mr. Kushal Chatterjee
Mr. Manish Shukla
Mr. Oishik Chatterjee
Ms. Ivi Banerjee
...for the proposed added parties
/respondent.

In Re: FMAT 433 of 2025
With
CAN 1 of 2025, CAN 2 of 2025

1. The present appeal arises out of a suit filed by the plaintiff/appellant for declaration that the plaintiff/appellant is a *bona fide* parking fee

collecting agent under the defendant no.1/respondent no.1 and has the right to continue to run the fee parking zone at Jogendra Kabiraj Row (eastern side) and for ancillary reliefs.

2. Learned counsel appearing for the appellant submits that the learned Trial Judge initially refused *ad interim* injunction, against which an appeal was preferred before this court.
3. A Division Bench of this court, vide order dated February 17, 2025 passed in the said appeal bearing FMAT 175 of 2024, had allowed the appeal, thereby setting aside the order impugned therein and granting *ad interim* injunction restraining the defendant no.1/respondent no.1 and its men and agents from disturbing the collection of parking fees by the appellant on the eastern side of Jogendra Kabiraj Row till disposal of the injunction application in the trial court.
4. Simultaneously, however, it was made clear that the above injunction was granted subject to the condition that the appellant shall go on paying the remuneration, as fixed by agreement between the respondent no.1 and the appellant, to the respondent no.1 for collection of parking fees from the eastern side of Jogendra Kabiraj Row.
5. In default of such payment, it was recorded, it would be open to the respondent no.1 to apply for

vacating the interim order before the learned Trial Court.

6. Subsequently, although the appellant claims to have gone on paying Rs.300/- as parking fees, the learned Trial Judge, by the present impugned order, vacated the *ad interim* order of injunction on the application made in that regard by the defendant/respondent no.1 on the premise that the default clause of the order of this court in the previous appeal had come into operation, since the remuneration payable by virtue of the agreement between the parties was not paid by the appellant.
7. Learned counsel for the appellant disputes such proposition and submits that although there was an agreement between the parties to pay at the rate of Rs.1200/- per day as collection charges remuneration, the same was not applicable to the eastern side of Jogendra Kabiraj Row.
8. It is alleged that due to the harassment being suffered by the appellant at the hands of the agents of the respondent no.1-Society, by not only damaging the parked cars but also attempting to harass the family of the appellant, the parking fee collection is suffering.
9. That apart, it is submitted that there was no written agreement between the parties at any point of time for any such payment to be made.

10. Learned counsel places particular reliance on the admitted rate chart for various categories of day car parking lots, from where it appears that at the most, five two wheelers and ten cars/vans/mini buses can be parked on the said street per day.
11. Even if it is construed that the capacity of vehicles is parked on the said side of the road on a day, the total amount collected by the appellant would not reach Rs.1200/-, which is claimed by the defendant /respondent no.1 to have been paid by the plaintiff/appellant.
12. Moreover, it is pointed out that the learned Trial Judge proceeded on a patently erroneous premise by observing that the job cards indicate that an amount of Rs.1200/- was being paid per day by the appellant.
13. Learned counsel points out that the job card, that is, Exhibit-18, which was relied on by the learned Trial Judge, is in respect of the western side of Jogendra Kabiraj Row and as such is not applicable to the eastern side of the said row, which is the subject-matter of the present suit.
14. Learned counsel appearing on behalf of the respondent no.1 opposes such prayer and it is pointed out that the amount of Rs.300/- was being paid over a period of several days and not per day.

15. In any event, it is argued by the respondent no.1 that the plaintiff having failed to pay the remuneration at the agreed rate, the learned Trial Judge was justified in vacating the impugned order.
16. Upon a perusal of the impugned order, we find a patent error in reasoning therein inasmuch as the learned Trial Judge, *inter alia*, relied on Exhibit-18 which is a job card in respect of the western side of the concerned road and as such could not be germane for the present purpose, which relates to the eastern side of Jogendra Kabiraj Row.
17. However, we find from the averments made in the plaint of the suit by the plaintiff/appellant herself, in particular in paragraph nos.10 and 11 thereof, that admittedly the plaintiff having requested defendant no.1 to allow her to operate as the collection employee of the fee parking zone at Jogendra Kabiraj Row (Eastern Side), the suit property, upon payment of daily fee of Rs. 1200/- per day, the defendant no.1 orally entrusted the plaintiff to operate as the collection agent temporarily on and from January 1, 2021 at a daily fee of Rs.1200/- payable by the plaintiff to the defendant no.1.
18. It is alleged further in the plaint that the authorities assured that the plaintiff would be appointed on a permanent basis upon payment of daily fee of

Rs.640 per day at a later stage after peaceful discussions, which never came to be as the plaintiff was allegedly coerced to agree to pay Rs.1200/- per day as demanded by the defendant no.1 at the time of death of her husband.

19. Learned counsel also insinuates that due to her financial condition, the plaintiff being a widow with one minor child at present, cannot meet the exorbitant amount of Rs.1200/- per day, keeping in view the limited number of cars which can be parked on the subject zone, fetching a remuneration below such amount.
20. Be that as it may, in view of the clear averment in the plaint that the plaintiff had agreed to pay initially at the rate of Rs.640/- per day at a later stage, which never materialized and the plaintiff was compelled to agree to pay Rs.1200/- per day, we cannot permit the plaintiff to resile from such position at this stage. As per the plaint, the plaintiff/appellant all along was to pay at the rate of Rs. 1200/- per day.
21. The said averment in the plaint is categorically in respect of the eastern side of Jogendra Kabiraj Row, since the subject-matter of the suit itself is the said property.
22. In the previous order of the Division Bench dated February 17, 2025, at the *ad interim* stage, it was

categorically made clear that the injunction granted was subject to the condition that the appellant shall go on paying the remuneration as fixed by agreement between the respondent no.1 and the appellant to the respondent no.1 for collection of parking fees from the eastern side from the Jogendra Kabiraj Row. The injunction application was, in fact, ultimately dismissed.

23. Read in conjunction with paragraph nos.10 and 11 of the plaint, as narrated above, there cannot be any manner of doubt that the last-agreed rate was Rs.1200/- per day and in default of the same, by virtue of the said order of this court, the interim order of injunction stood vacated, which was merely granted the seal of court by the learned Trial Judge in the impugned order.
24. Hence, we do not find any illegality in the order impugned herein.
25. Accordingly, FMAT 433 of 2025 is dismissed under Order XLI Rule 11 of the Code of Civil Procedure.
26. CAN 1 of 2025 and CAN 2 of 2025, filed in connection therewith, are consequentially dismissed as well.
27. There will be no order as to costs.
28. It is further clarified that all the above observations are of a tentative nature, made for the limited purpose of adjudicating the present appeal and

shall not in any manner unnecessarily prejudice the learned Trial Judge at any further stage of the two suits, be it at the interlocutory stage or the final hearing of the suit.

In Re: FMAT 462 of 2025

With

CAN 1 of 2025

29. The present appeal arises out of the grant of an *ad interim* injunction in favour of the plaintiff/respondent no.1.
30. In the said suit, the respondent no.1 claims to have been granted rights to collect car parking fees in respect of the eastern side of Jogendra Kabiraj Row by the proforma defendant/proforma respondent namely one Burrabazar Fee Parking Co-operative Society Limited.
31. It has been contended by the plaintiff/respondent before the trial court that such rights were being disturbed by the defendant/present appellant, whereupon an *ad interim* injunction has been granted as prayed for.
32. Learned counsel for the appellant contends that in view of the pendency of a prior suit at the behest of the present appellant claiming similar rights in respect of the self-same car parking zone, in which an *ad interim* injunction was granted by a Division

Bench of this court, the said *ad interim* order could not have been passed.

33. Secondly, it is argued that the Burrabazar Fee Parking Co-operative Society Limited, through which the present plaintiff/respondent no.1 claims its rights, never took the plea that any such car parking fee collection right has been created in favour of the plaintiff/respondent no.1, either in the written statement or written objection of the said Society in the earlier suit.
34. Thus, it is submitted that the impugned order is bad and ought to be set aside.
35. Although the appeal is still at the admission stage, we grant right of hearing to the learned Senior Advocate appearing for the respondent no.1 in order to ascertain the version of the said respondent.
36. Learned senior counsel submits that several documents have been produced to show that authority has been granted in favour of the plaintiff/respondent no.1 by the proforma respondent for collection of parking fees in respect of the car parking zone-in-question.
37. Not only that, the present plaintiff/respondent no.1 also applied under Order I Rule 10 of the Code of Civil Procedure for being added as a party to the

previous suit filed by the present appellant, which application is still pending.

38. Learned senior counsel argues in addition that an application for review of the *ad interim* injunction order passed by the Division Bench of this court in the earlier suit at the behest of the plaintiff/respondent no.1 is still pending on the very premise that the rights created in favour of the present plaintiff/respondent no.1 were not considered by the said court.
39. Thus, it is contended that the *ad interim* injunction order granted in favour of the plaintiff/respondent no.1 was justified.
40. Upon hearing learned counsel for all the parties, we find that, indeed, the Society (proforma respondent no.2 herein), under which the plaintiff/respondent claims its right of car parking fee collection, never pleaded either in its written statement or written objection in the prior suit filed by the present appellant as regards any right having been created in favour of the plaintiff/respondent no.1.
41. That apart, the manner in which the temporary injunction application has been couched in the present suit by the plaintiff and the *ad interim* order was granted does not pertain to the collection by any of the parties of parking fees.

42. The prayer as well as the language of the *ad interim* order impugned herein is that an injunction (in the form of status quo in the order) regarding possession, nature and character in respect of the suit premises be granted, although the dispute is regarding the conflicting rights of the appellant and the respondent no. 1 to collect car parking fees.
43. The description of the suit premises in the plaint and the injunction application is “All that Fee Parking Zone” at Jogendra Kabiraj Row (eastern side), under Posta Police Station in the District of Kolkata-700007.
44. A “fee parking zone” is a physical location and the plaintiff/respondent has not claimed in his suit any right, title or interest and/or possession in respect of the corpus of the said property.
45. As such, the status quo granted by the learned Trial Judge was in any event misconceived.
46. However, keeping in view that the said order does not affect the rights of the present appellant or for that matter, the plaintiff/respondent no.1, in respect of collection of car parking fees, which is the primary bone of contention between the parties, we do not find it worthwhile to interfere with the impugned order in any manner.
47. Another aspect of the matter cannot be overlooked.

48. In the event an interim order was to be passed by the learned Trial Judge affecting the rights of the present appellant of car parking fee collection, it would only be appropriate to give an advance notice and give a right of hearing to the present appellant prior to passing such an *ad interim* order.
49. We say this because independently of pendency of a subsequent review application at the behest of the present respondent no.1, fact remains that an *ad interim* order of injunction was granted in favour of the present appellant in the earlier suit filed by the latter, protecting the rights of the present appellant to collect parking fees from the zone-in-question, which is also the subject-matter of the subsequent suit from which the present appeal emanates.
50. The said *ad interim* order was vacated subsequently and affirmed by this court only on the ground that the condition thereof, that is, payment of due remuneration as per agreement was not made by the appellant, although subsequently the temporary injunction application itself was rejected.
51. However, since the previous suit filed by the plaintiff claiming self-same rights over the self-same property is still pending, despite the subsequent rejection of the temporary injunction application of the appellant in the said suit, the

bone of contention and issues involved in both the suits are similar in nature.

52. Accordingly, we direct Title Suit No.2474 of 2025 pending before the 12th Bench of the City Civil Court at Calcutta to be clubbed and heard along with Title Suit no.507 of 2024 along with the connected interlocutory applications, in order to avoid conflict of judgments.
53. It is expected that the injunction application from which the present appeal arises shall be heard expeditiously by the learned Trial Judge upon granting a reasonable opportunity to the present appellant to file written objection thereto, preferably within six weeks from the date of communication of this order to the said court.
54. It is further clarified that all the above observations are of a tentative nature, made for the limited purpose of adjudicating the present appeal and shall not in any manner unnecessarily prejudice the learned Trial Judge at any further stage of the two suits, be it at the interlocutory stage or the final hearing of the suit.
55. Accordingly, FMAT 462 of 2025 is dismissed under Order XLI Rule 11 of the Code of Civil Procedure in the light of the above observations and directions.
56. CAN 1 of 2025 filed in connection therewith is consequentially dismissed as well.

57. There will be no order as to costs.

(Sabyasachi Bhattacharyya, J.)

(Supratim Bhattacharya, J.)