

81 **08.01.**
2025
Ct. No. 08

Ab

FMAT 385 of 2024
IA No. CAN 1 of 2024
IA No. CAN 2 of 2024

Pradip Kumar Ganeriwala
Vs.
Rohan Ganeriwala and others.

Mr. Rajeev Kumar Jain,
Mr. Sounak Sengupta,
Ms. Sreyasi Chatterjee,
Mr. Kunal Shaw,
Mr. Jamini Majumdar.

... for the appellant.

Mr. Balaji Chakraborty,

... for the respondent no. 5 and 17.

Mr. Rachit Lakhmani,
Mr. Chhandak Dutta.

... for the respondent no. 18.

Mr. Bratin Kumar Dey,
Ms. Anjana Banerjee.

... for the respondent nos. 20 to 22.

We are astonished to find that the defence of the defendant no. 2/appellant is struck off within fortnight from the date of the institution of the suit, as the conduct of the defendant no. 2/appellant does not find palatable to the learned Judge.

It is an ardent duty of the Judicial Officer to conduct the case on the basis of the merit and should not be swayed by an extraneous factor and pass an order, more particularly, striking out the defence, which is a valuable right.

Order VIII Rule 1 of the Code of Civil Procedure provides thirty days period from the date of service of summons for presentation of the written statement and the proviso inserted thereto, bestowed power upon the Court to extend the said period of recording the reasons thereof.

The right to file written statement within the statutory period is an invaluable right, which cannot be squeezed or be shortened as the Judicial Officer thinks

it fit to do so. The moment the legislature has fixed a timeline, within which the defence is to be presented by the defendant, it cannot be struck off within the said period despite the conduct of the defendant does not appear to be proper. Striking out the defence within the period provided under Order VIII Rule 1 of the Code offends the core value of the right to defend and provide an easy path to the plaintiff to march over the same and get an ex parte decree against the defendant.

It is an ardent duty of the learned Judge to see that the justice is not only be done but seem to be done. Any order, which takes away the valuable right of the defendant to defend within the period provided in the statute causes greater injustice rather pretending the justice to have been imparted.

Though the said order is not the subject matter of challenge before us, but there is no fetter on the part of the Appellate Court to interfere whenever the injustice is manifestly evident and keeping in mind the core value of the constitutional ethos that a person cannot be condemned without being heard, we permit the defendant no.2/appellant to file written statement within thirty days from date before the Trial Court.

The appeals being FMA 481 of 2024 and FMA 1495 of 2024 appearing in the supplementary list dated 8th January 2025 including the instant appeal, have been filed at the behest of the defendant no. 2/appellant assailing an order by which the Trial Court passed an ex parte ad interim order of injunction restraining the set of defendants from replying on the deed of partition and settlement and deed of declaration and/or parting with possession or in any way encumbering, removing and/or disposing of the schedule A, B and C property, in favour of third party. The said ex parte ad interim order of injunction is extended from time to time and is fixed on 27th

February 2025.

Several pleas are taken by the appellant that the plaintiff/respondent is guilty of suppression of material fact and has prevaricated his stand, which he took in another suit instituted between the parties. Several orders are passed, which are brought on record by way of an application indicating that the learned Judge was engulfed into extraneous consideration than the primary consideration of adjudicating the right, title and interest of the parties pending the said suit and the protection to be extended. Even the costs of Rs. 20,000/- was imposed upon the appellant when a recall application is taken out flagging an issue, which, in our opinion, does not deserve such treatment.

We, therefore, set aside the portion of the order where such costs to be imposed by the Trial Court.

A litigant may ventilate his grievance taking multiple points and it is an ardent duty of the Court to decide the aforesaid points.

The Counsel for the plaintiff/respondent has invited the attention of the Court to the conduct and demeanour of the appellant before the Trial Court, but we find that instead of hovering around the aforesaid unrelated issues, it would sub-serve the justice if the application for temporary injunction is decided on merit.

Since the written objection to the injunction application could not be filed, as the technical points were taken at the behest of the appellant, we feel that it would be proper that the appellant should file the written objection to the application for temporary injunction disclosing all the facts and the point of law as available to him so that the application for temporary injunction could be brought to its logical end.

We, therefore, permit the appellant to file written

objection to the application for temporary injunction within ten days from date. Rejoinder, if any, shall be filed within four days therefrom.

The time limit set forth herein above is peremptory and mandatory. After filing of the pleadings as above, the learned Judge in the Trial Court shall prepone the date fixed for hearing of the application for temporary injunction and shall dispose of the same within ten days from the date fixed for filing the respective pleadings.

In order to adhere the time limit, as indicated above, if necessary, the learned Judge shall fix the matter on day to day basis. Neither of the parties to the proceeding shall pray for unnecessary adjournments unless necessitated by unforeseen and unavoidable circumstances and shall assist and cooperate the learned Judge in securing the disposal of the said application for temporary injunction.

We are informed that an application under Section 24 of the Code is also taken out by the appellant before the learned District Judge, which is still pending.

The aforesaid direction or this order shall not stand in the way of deciding an application under Section 24 of the Code, which we trust and hope shall be decided by the learned District Judge on its merit.

With these observations, all the appeals are disposed of.

In view of the disposal of the appeals itself, all the pending applications, if there be any, are also disposed of.

There shall, however, be no order as to costs.

(Harish Tandon, J.)

(Prasenjit Biswas, J.)

