

IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
Appellate Side

Present : The Hon'ble Mr. Justice Sabyasachi Bhattacharyya
&
The Hon'ble Mr. Justice Uday Kumar

FMAT No. 389 of 2024

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CAN 1 of 2024

Yasir Ahmed
Vs.
Ezaz Ahmed @ Adil Ahmed

For the appellant : Mr. Susenjit Banik,
Mr. Gunjan Shah,
Ms. Shreya Agarwal,
Mr. Deepak Khetawat

For the respondent : Mr. Sanjay Mukherjee,
Mr. Arghadip Das,
Mr. Chiranjit Pal

Heard on : March 3, 2025.

Judgment on : March 3, 2025.

Sabyasachi Bhattacharyya, J.:

1. The present appeal has been preferred by the plaintiff in a suit for a specific performance of an agreement, against an order whereby the prayer of the plaintiff/appellant for extension of an ad interim injunction order granted earlier was refused.
2. Upon hearing learned Counsel for the parties, we find that the refusal of the prayer for extension by the impugned order was on two fold grounds - first, that the initial ad interim injunction order had ceased on August 13, 2024, that is, before the date of the impugned order, which was passed on September 11, 2024, with the filing of the written objection by the defendant, and secondly, that the extension

application filed by the plaintiff/appellant was not supported by any affidavit and did not “show any concrete reason for extension”.

3. We find from the records that although the suit was filed on June 25, 2024 and on the self-same date the plaintiff/appellant had moved an application for temporary and ad interim injunction under Order XXXIX Rules 1 and 2 of the Code of Civil Procedure (in short “the Code”), ad interim injunction was not granted, since a caveat was on record, having been lodged by the defendant/respondent.
4. Thereafter, time was granted on several occasions to the defendant/respondent for filing written objection to the temporary injunction application.
5. The defendant appeared before the court for the first time on July 9, 2024 and filed a petition for time to file written statement and written objection, without filing any Vakalatnama.
6. On July 19, 2024, on the prayer of the learned Advocate for the plaintiff in the trial court, the record was put up and July 26, 2024 was fixed for hearing of the injunction application, with a direction upon the plaintiff to inform the defendant about the said hearing.
7. On July 26, 2024 the learned Advocate appearing on behalf of the defendant again filed a petition praying for time on the ground stated therein. Upon such prayer for adjournment of the defendant, August 1, 2024 was fixed for hearing of the injunction application.
8. On August 1, 2024, however, the plaintiff was present but the defendant did not take any steps, apparently due to a resolution of the local Bar.
9. As such, the case had to be adjourned again. Thereafter, the matter was fixed for hearing on August 7, 2024, when the ad interim prayer of the plaintiff for injunction was taken up.
10. The learned Trial Judge, upon categorically recording the repeated adjournments sought by the defendant/respondent for filing written objection, observed that the

defendant had got several opportunities to file written objection. The defendant had prayed for an adjournment again on August 7, 2024, but the said prayer was refused by the learned Trial Judge, who was of the opinion that the medical ground shown by the defendant was not sufficient.

11. On the said date, the learned Trial Judge observed that from the submission of the parties it was found that admittedly, the plaintiff/appellant is in possession of the suit property and is apprehending that the defendant may sell, encumber and/or alienate and/or disturb the peaceful possession of the plaintiff in the suit property. The learned Trial Judge also observed that for the sake of argument even if the plaintiff was occupying the suit premises as a trespasser, still the law prescribed that the plaintiff cannot be evicted without due course of law. Hence, it was recorded that without going into the merit of the injunction application and prejudicing any right of the defendant to “confront the injunction application”, the court was inclined to pass an order of ad interim injunction directing the defendant and his men and agents not to interfere with the peaceful possession of the plaintiff in the suit property or to do any act which encumbers the property and gives rise to multiplicity of proceeding “till the defendant files the written objection against the injunction application”.
12. Notably, August 9, 2024 was fixed as the next date for filing of the written objection by the defendant. However, even on August 9, 2024 no written objection was filed by the defendant, again taking shelter under a resolution of the local Bar, despite the learned Advocates for both sides having filed *hazira* in the Trial court.
13. On August 9, 2024, on a petition for extension filed by the plaintiff without any affidavit, extension of the interim order was granted till September 11, 2024, without the defendant/respondent or the court raising any demur for non-filing of such affidavit accompanying the extension application.

14. On September 11, 2024, when the impugned order was passed, the learned Advocate for the plaintiff was not present at the time of call. The learned Trial Judge took up the matter, and on the two-fold grounds as indicated at the inception of this order, refused to extend the ad interim order.
15. Certain facets of the matter are required to be discussed for adjudicating whether the learned Trial Judge erred in law or not in passing the impugned order.
16. The first feature of the case which strikes the eye is that taking undue advantage of the caveat lodged by the defendant, the defendant/respondent has been seeking repeated adjournments on various grounds for filing written objection to the temporary injunction application in the trial court. It was such conduct of the defendant/respondent which prompted the learned Trial Judge to fix the matter for hearing and on August 7, 2024 to grant an ad interim order of injunction in favour of the plaintiff even without any written objection being filed.
17. Although it was recorded in the said order that the learned Trial Judge was not going into the merit of the injunction application and not prejudicing any right of the defendant to confront the injunction application filed by the plaintiff, it is evident from the order dated August 7, 2024, which was the initial and main order of ad interim injunction, that the learned Trial Judge fully took into consideration the fact that the plaintiff is in possession of the suit property and even that a trespasser could not be evicted without due process of law, which was the primary reason for grant of ad interim injunction.
18. In such context, the observation of not going into the merits has to be taken in proper perspective. The learned Trial Judge clearly recorded that the learned Judge was not going into the merits not of the ad interim prayer but of the injunction application itself, and the ad interim injunction would not prejudice any right of the defendant "to confront the injunction application".

19. Hence, such non-consideration of merit was restricted to the final hearing of the injunction application and the learned Trial Judge gave sufficient reasons for passing the ad interim injunction.
20. More importantly, the said ad interim injunction was neither challenged in any appeal by the defendant/respondent nor was any application filed under Order XXXIX Rule 4 of the Code to vacate the same. Hence, such ad interim order has attained finality.
21. Thereafter, even on the next date fixed, that is on August 9, 2024, written objection was not filed by the defendant, although *hazira* was filed by both parties, under the pretext that there was a resolution of the local Bar.
22. Thus, although in the order dated August 7, 2024 it was recorded by the learned Trial Judge that the ad interim injunction was granted till the defendant files written objection (which was ultimately filed on August 13, 2024 by a put-up petition), by the order dated August 9, 2024, when the defendant/respondent again failed to file the written objection, the ad interim injunction was, nonetheless, extended till September 11, 2024. The observation of the learned Trial Judge in the order dated August 7, 2024, thus, stood merged with the subsequent order dated August 9, 2024 where the limited operation of the ad interim order was modified from the date of filing of the written objection to the next returnable date that is, September 11, 2024.
23. In any event, whatever might have been the tenor of the order dated August 7, 2024, the defendant/respondent did not file its written objection on the next date fixed and as such, it cannot be said that the plaintiff would be at the mercy of the defendant, waiting for the date on which the defendant would be filing its written objection, to know the fate of the ad interim order.
24. Even otherwise, as discussed above, the ad interim injunction order was further extended on August 9, 2024 and was fully operative till September 11, 2024, the

date on which the impugned order refusing the extension was passed. Hence, the finding of the learned trial Judge that it had expired on August 13, 2024 with the filing of written objection by the defendant was patently erroneous.

25. Another aspect of the matter which is required to be considered is whether for the extension of an ad interim injunction granted previously, if such extension is prayed for and/or granted prior to the expiry of the ad interim order, requires any application affirmed by affidavit or, for that matter, any formal application at all.
26. There is no law which mandates even an application to be filed for extension in the event the extension is sought prior to the expiry of the ad interim order. The Civil Court, both under Sections 148 and 151 of the Code of Civil Procedure, has ample power to extend such injunction, even apart from the parent provision under Order XXXIX Rules 1 and 2 of the Code, which was already exercised at the time of grant of the initial ad interim injunction.
27. The very expression "extension" presupposes that there was some previous order which is to be extended. An extension of injunction (although broadly passed under Order XXXIX Rules 1 and 2 of the Code), it may be noted, by its very definition, is not an independent grant of injunction, but is only a continuation of the ad interim order which was granted by the court upon application of its mind.
28. As such, in our opinion, for an extension prayed within the time when the ad interim order is going to expire, no separate application is required at all, let alone any application supported by an affidavit.
29. There is no bar for the court to extend the interim order already granted even on an oral prayer, provided of course, that the ad interim injunction has not expired and the case is not one where the injunction order is to be re-imposed, in which case, the rigours of a regular application under Order XXXIX Rules 1 and 2 including the necessity of filing of an affidavit accompanying the reimposition application would come into play, since, for all practical purposes a reimposition

after expiry of the original order might still be considered to be an independent exercise of grant of fresh injunction.

30. Neither the Code of Civil Procedure nor the Civil Rules and Orders framed by this Court mandate any affidavit to be annexed to an application for extension of interim order, nor is any application at all required for such purpose.

31. Hence, the argument of the respondent and the reasoning of the learned Trial Judge on such count is not tenable in the eye of law.

32. That apart, the appellant submits that it had filed an affidavit on the same day prior to the passing of the impugned order but after the hearing was over. There was always open to the learned Trial Judge to direct the plaintiff/appellant to file a supporting affidavit in the event it was of the opinion that for such technical reason it would not extend the ad interim order.

33. That apart, the learned Trial Judge ought not to have cited the non-filing of an affidavit in support of the extension application to refuse extension, thereby taking the appellant/petitioner by surprise, for the simple reason that even on a previous occasion, on August 9, 2024, an extension was granted by the same court without insisting upon any affidavit or even any verification being filed in support of the then extension application.

34. Thus, the learned Trial Judge adopted double standards in once extending an ad interim order without any verification or affidavit and thereafter refusing the same for non-filing of the same, without putting the plaintiff to notice that such non-filing of an affidavit would entail a refusal of the prayer for extension of a still-subsisting ad interim order.

35. Also, the other ground that the ad interim order had expired on August 13, 2024 with the filing of the written objection is not tenable since, by a previous order dated August 9, 2024, the ad interim injunction had already been extended till

September 11, 2024, that is the date of the impugned order, which was beyond the date of filing of the written objection (August 13, 2024).

36. The learned trial Judge further observed while refusing extension that no “concrete reason for extension” had been shown by the plaintiff/appellant. However, the approach should be the contrary since, in the absence of any change of circumstance pleaded by the defendant, the grounds prevailing on the date of passing the initial ad interim injunction order should be deemed to subsist, justifying extension almost as a matter of course.
37. Hence, seen from all perspectives, the impugned order is vitiated by error of law as well as of fact.
38. Accordingly, the said order cannot be sustained.
39. Hence, FMAT No. 389 of 2024 is allowed on contest without costs, thereby setting aside the impugned order dated September 11, 2024 and extending the ad interim order of injunction granted to the plaintiff/appellant initially on August 7, 2024 till disposal of the temporary injunction application pending in the court below.
40. CAN 1 of 2024 stands disposed of accordingly as well.
41. Since we are informed that the temporary injunction application is fixed for hearing tomorrow before the learned Trial Judge and the pleadings have been exchanged in connection therewith by the parties, we request the learned Trial Judge to positively conclude the hearing of the temporary injunction application by tomorrow without granting any unnecessary adjournment to either of the parties and to dispose of the same by passing final orders thereon within a week thereafter.
42. It is further clarified that the observations made above are all rendered for the purpose of scrutinizing the legality of the refusal to extend an ad interim injunction order and are restricted to the said exercise. Such observations shall not be binding in any manner at any further stage of the suit, including the final hearing of

the injunction application, which the learned Trial Judge shall decide independently on the basis of its own merits without being unnecessarily influenced in any manner by any of the observations made above or in the impugned order.

43. There will be no order as to costs.

I agree.

(Sabyasachi Bhattacharyya, J.)

(Uday Kumar, J.)