

Form No.J(2)

IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
Appellate Side

Present : The Hon'ble Mr. Justice Sabyasachi Bhattacharyya
&
The Hon'ble Mr. Justice Supratim Bhattacharya

FMAT 495 of 2025
with
CAN 1 of 2025

Fabwarth Promoters Pvt. Ltd.
Vs.
FIRE EVENTS and Ors.

For the appellants : Mr. Shatadru Chakraborty,
Ld. Snr. Adv.,
Mr. Shounak Mukhopadhyay,
Mr. Ramendu Agarwal, Advs.

For the respondents : Mr. Aritra Basu,
Mr. Soham Sen,
Mr. R. K. Chowdhury, Advs.

Heard on : December 18, 2025.
Judgment on : December 18, 2025.

Sabyasachi Bhattacharyya, J.:

1. The present challenge has been preferred against an ad interim order of injunction passed in connection with a suit

instituted by the plaintiffs/respondent nos. 1 and 2 for the following reliefs:

“a) Decree for Declaration that the defendant is responsible and duty bound to give access to run the business in compliance of the agreement dated 28.02.2025 executed between the plaintiff no. 1 & defendant.

b) Decree for Declaration that the defendant is liable to pay penalty and compensation for late/delayed payment and for restraining the plaintiff to run the business as per agreement.

c) Interim order to pay 50% amount by calculating average payment made on last few months through invoice and book basis for passing daily life of the plaintiffs and restrain the defendant from creating any third party interest in respect of the portion i.e. basement one club; name GOLD at J.W. Marriot, Kolkata.

d) Cost of the suit;

e) Such other relief or reliefs which the Plaintiff is entitled to get in law and in equity.”

2. Learned counsel appearing for the appellant argues that the learned Trial Judge, while granting ad interim injunction, failed to consider that the learned Trial Court did not have territorial jurisdiction to take up the matter.
3. It is pointed out that the premise of the reliefs sought in the plaint is an agreement entered into between the parties on February 28, 2025. By virtue of the said agreement, the

plaintiffs were to render certain services to the defendants, who run a hotel from a premises at J.B.S. Haldane Avenue, Tangra, Police Station – Pragati Maidan, Kolkata - 700105.

4. It is submitted that the first relief sought in the suit is a decree for declaration that the defendant is responsible and duty bound to give access to run the business in compliance of such agreement.
5. As such, the plinth of the suit is premised around the location where the business was being run by the plaintiffs. Such location being beyond the territorial jurisdiction of the learned Trial Court, the learned Trial Judge ought to have rejected the plaint on the ground of lack of territorial jurisdiction.
6. Secondly, it is argued that the suit is, in the garb of a declaratory suit, one for specific performance of contract. Since the genesis of the suit is a service contract, such a suit for specific performance does not lie, for which the plaintiffs have indirectly sought to obtain reliefs which they could not get directly.
7. Thirdly, it is contended by the appellant that the only basis on which jurisdiction has been claimed to be within the City Civil Court at Calcutta, the learned Trial Court, is that the email by

which the contract was terminated was received by the plaintiffs within the jurisdiction of the City Civil Court, at their office on Old Court House Street.

8. However, learned counsel for the appellant relies on *Oil and Natural Gas Commission vs. Utpal Kumar Basu and Ors.* reported at (1994) 4 SCC 711 to argue that the receipt of such communication and the location thereof is immaterial to ascertain the territorial jurisdiction of the court taking up the suit.
9. Going by both Sections 16 and 20 of the Code of Civil Procedure, the City Civil Court did not have jurisdiction, since it is the Alipore Judges' Court which has territorial jurisdiction to take up the matter, according to the police station of the location of the appellant's hotel.
10. Learned counsel for the appellant next contends that the reliefs sought in the suit are primarily touching the immovable property, which is situated outside the jurisdiction of the City Civil Court.
11. The suit is one for land/property and not for specific performance of contract in effect.

12. Lastly, learned counsel for the appellant argues that the prayer for temporary injunction sought by the plaintiffs/respondents was even beyond the reliefs claimed in the suit.
13. It is also insinuated that the relief of the plaintiffs could at best lie in damages.
14. Learned counsel appearing for the plaintiffs/respondents argues that the suit, in its present form, is not one for land. By placing reliance on relief (a) in the plaint, it is contended that the same seeks a declaration that the defendant is responsible and duty-bound to give access to run the business in compliance of the agreement-in-question.
15. Thus, the cardinal premise of the suit is the agreement and its termination. Since the termination was communicated to the plaintiffs/respondents and the latter received such communication at their office situated at Old Court House Street, which is, in turn, situated within the territorial jurisdiction of the City Civil Court at Calcutta, the said court has territorial jurisdiction to hear out the suit.
16. It is argued further by the respondents that in terms of Section 20 of the Code of Civil Procedure, a suit lies wherever even a part of the cause of action arises. Thus, since the termination

notice was received by email by the plaintiffs/respondents within the territorial jurisdiction of the Trial Court, the said Court has jurisdiction to take up the suit. Accordingly, it is prayed that the appeal may be dismissed.

17. We admit the appeal to be heard on the grounds taken in the memorandum, on being satisfied that a strong *prima facie* case has been made out.
18. At this juncture, upon having heard both sides, we give the option to learned counsel for the parties, upon expressing our proposed order, to choose as to whether they would prefer the appeal itself to be taken up for hearing, to cut short unnecessary pendency of litigation before this Court, which would not enure to the benefit of neither of the parties or to restrict the disposal to the connected application. At this, the parties consent to the appeal being taken up and decided here and now.
19. Upon a careful consideration of the arguments of the parties, we find substance in the contention of the appellant, as opposed to that of the respondent. Unlike an agreement, where the situs at which the offer is accepted, for it to culminate in a concluded contract, might have a germane

bearing on the cause of action, a termination of contract is independent and irrespective of the receipt of communication of such termination. The receipt of the communication of the termination, as pleaded by the plaintiffs/respondents to be within the territorial jurisdiction of the City Civil Court, is merely a fallout of the termination, happening *post facto* after the termination has taken place the moment the email was sent by the defendants/appellants from its own office, situated outside the territorial jurisdiction of the City Civil Court at Calcutta.

20. Termination of a contract takes places the moment it is decided by one of the contracting parties to determine the contract, which happened in the present case beyond the territorial jurisdiction of the City Civil Court by the mere act of sending the email-in-question, informing about such termination. Hence, we do not find substance in the defence of the respondents herein that the receipt of the email carrying the termination would have any germane bearing whatsoever on the jurisdiction of the Court.

21. Going by the principle laid down in *Oil and Natural Gas Commission (supra)*, cited by the appellant, the mere fact that the communication was received by the defendant at a

particular place, does not confer territorial jurisdiction on the courts having jurisdiction over such location.

22. Secondly, we find that the suit is not one for specific performance. Although the first relief sought in the suit is a declaration that the defendant is responsible and duty-bound to give access to run the business in terms of the agreement-in-question, such business is actually run in the appellant's hotel, situated outside the territorial jurisdiction of the Trial Court.
23. More importantly, relief (b) seeks a declaration that the defendant is liable to pay penalty and compensation for late/delayed payment. Prayer (c) of the plaint also seeks a relief of a payment of 50% of average payment of the last few months. Thus, apparently, on the face of the plaint, the remedy of the plaintiffs lies in damages and not in specific performance of the contract.
24. Thirdly, as rightly argued by the appellant, the rights claimed in the suit, in whatever manner couched, ultimately lead to corporeal reliefs being sought in respect of an immovable property which is situated outside the territorial jurisdiction of the Trial Court.

25. Even the temporary injunction application, on the basis of which the impugned ad interim order was granted, seeks a relief restraining the defendant/present appellant from transferring, alienating, mortgaging and/or to create any third party interest in respect of the “suit property”. Evidently, such relief is not only beyond the prayers made in the suit, but also betrays the fact that the suit has been filed seeking corporeal reliefs in connection with an immovable property which is situated outside the territorial jurisdiction of the City Civil Court at Calcutta.
26. If the plaintiffs/respondents were to argue that the suit is not one for reliefs regarding the right of the plaintiffs to run their business at the immovable property, which again pertains directly to the immovable property, then the alternative would be that the suit had to be couched as one for specific performance of contract, which has evidently not been done by the plaintiffs, for whatever reason (one of which might be that a suit for enforcement of a service contract necessitating a service of personal nature to be performed, arguably, is not maintainable within the four corners of the Specific Relief Act, 1963).

27. Thus, on a comprehensive assessment of the materials on record and even on the face of the plaint and the injunction application, we clearly find that the learned Trial Court did not have territorial jurisdiction to entertain the suit or to grant an ad interim injunction, which facet, despite being an integral part of *prima facie* case, was not adverted to at all by the learned Trial Judge while granting the impugned ad interim injunction.
28. However, we hasten to observe that the above findings/observations made by us pertain to the limited scope of the appeal, which arises out of an ad interim grant of injunction, and are not conclusive but only tentative in nature and shall not affect in any manner the pending proceedings before the Trial Court, including the application under Order VII Rule 11 of the Code of Civil Procedure which is pending at the behest of the defendant/appellant and/or the disposal of the injunction application finally and/or the hearing of the suit.
29. However, in view of the above observations, we are of the opinion that the learned Trial Judge clearly acted beyond jurisdiction and granted the impugned ad interim injunction illegally, *de hors* the law.

30. Hence, FMAT 495 of 2025 is allowed on contest, thereby setting aside the impugned order, bearing Order No. 2 dated November 11, 2025 passed by the learned Judge, Seventh Bench, City Civil Court at Calcutta in Title Suit No. 2504 of 2025.
31. The original certified copy of the impugned order has been filed before us today and be kept on record. The defect in that regard be deemed to stand removed.
32. The learned Trial Judge is requested to take up the pending application under Order VII Rule 11 of the Code of Civil Procedure filed by the defendant/appellant as expeditiously as possible, upon granting opportunity to the plaintiffs/respondents to file written objection thereto and after affording an opportunity of hearing to both parties. It is expected that such exercise shall be concluded within four working weeks from the date of communication of this order to the learned Trial Judge.
33. Immediately upon disposal of the said application, the learned Trial Judge shall take up for hearing the injunction application and decide the same in accordance with the decision arrived at on the application under Order VII Rule 11 of the Code of

Civil Procedure. Written objection to the injunction application shall be filed by the present appellant within a fortnight from this date in the Trial Court.

34. Consequentially, CAN 1 of 2025 is also disposed of.

35. There will be no order as to costs.

36. The parties shall act on the server copy of this order, duly downloaded from the official website of this court.

I agree.

(Sabyasachi Bhattacharyya, J.)

(Supratim Bhattacharya, J.)

AD-3
Ct No.16
18.12.2025
(SSS)