

D/L.15 with 16.
May 12, 2026.
MNS/AK.

FMAT No. 27 of 2026
+
CAN 1 of 2026
+
CAN 2 of 2026
with
FMAT No. 28 of 2026
+
CAN 1 of 2026
+
CAN 2 of 2026
+
CAN 3 of 2026

M/s. Dev Sahitya Kutir Pvt. Ltd.
Vs.
Uttam Kumar Agarwal and others

Mr. Anirban Roy,
Mr. Soumyadeep Dey, Advs.

...for the appellant.

Mr. Dev Chunder, Adv.

...for the respondent no. 1.

Mr. Anirban Pal, Adv.

...for the respondent nos. 2 to 6.

Re: CAN 2 of 2026
with
CAN 3 of 2026 (substitution)

1. CAN 2 of 2026, filed in connection with FMAT No. 27 of 2026, and CAN 3 of 2026, filed with regard to FMAT No. 28 of 2026, are applications for impleadment of the legal representative of the deceased respondent no. 2 in both the appeals.
2. Learned counsel for the appellant submits that for the first time from a letter dated March 16, 2026

written by the learned Advocate appearing for respondent nos. 3 to 6, the appellant came to know of the demise of respondent no. 2.

3. Immediately thereafter, the present applications have been filed for impleadment of the sole surviving heir and legal representative of the deceased respondent no. 2, being his wife Smt. Sangeeta Banerjee, in the appeals.

4. Upon hearing learned counsel for the parties, the court is satisfied that sufficient reason for the delay in making the applications, if any, has been furnished.

5. Accordingly, CAN 2 of 2026 and CAN 3 of 2026 are allowed, thereby directing Smt. Sangeeta Banerjee, daughter of late Anil Kumar Dutta, residing at 7/F, Manohar Pukur Second Lane, Kolkata-700 029, the particulars of whom are disclosed in paragraph no. 4 of the applications, to be substituted in place and stead of the deceased respondent no. 2, namely, Anil Kumar Dutta as respondent no. 2 in both the appeals.

6. The necessary consequential amendments to that effect to the cause title of the other applications as well as the Memorandum of Appeal shall be carried out by the learned Advocate for the appellant during the course of the day.

Re: CAN 1 of 2026 (condonation)

7. Heard learned counsel for the parties.

8. The delay in preferring FMAT No. 28 of 2026, which is against the parent ad interim order of injunction, is about sixty-six days, whereas the delay in preferring FMAT No. 27 of 2026 against the extension of the same order is about ten days.

9. The grounds made out in the condonation applications are more or less the same.

10. It has been pleaded in the applications that initially after the ad interim order was passed and the appellant came to know of the same, the appellant had a legitimate expectation that the injunction application would be decided early. Even otherwise, an application under Order XXXIX Rule 4 of the Code of Civil Procedure (Code) has been taken out by the appellant in the trial court for vacating the ad interim order, along with an application for local inspection, the latter to establish that the appellant is not constructing over or encroaching upon the suit premises.

11. Thus, there was a reasonable basis for the appellant anticipating that the vacating application would be disposed of early. When the same did not happen, a decision was taken to prefer these appeals.

12. However, due to shifting of the chamber of the learned Advocate appearing for the appellant in the

trial court, some of the papers and documents relating to the case were misplaced, which were found out later and the present appeal was drafted and filed thereafter.

13. Learned counsel appearing for the respondent nos. 2 to 6 opposes the prayer for condonation of delay and submits that a normal prudent person, in the event documents were misplaced from the chamber, would have lodged a General Diary entry.

14. It is further submitted that in the absence of any substantive document to prove the allegations made in the application, the same should not be allowed.

15. However, the explanation given for the delay in the application is found to be plausible.

16. We are unable to accept the contention that as a matter of rule, if papers are misplaced from an Advocate's chamber, the said learned Advocate has to lodge a complaint before the police authorities before undertaking efforts to trace out the same.

17. In the present case, the averment made in the condonation application speaks about the documents being misplaced due to a logical reason, that is, shifting of the chamber of the Advocate, and the papers having been traced out later.

18. Thus, we do not find any mala fide or negligence *per se* on the part of the appellant in occasioning the delay in preferring the appeals.

Moreover, the delay in preferring the appeals is not of so inordinate that an unnecessarily strict view has to be taken by the court.

19. Keeping in view of the above considerations, CAN 1 of 2026, filed in connection with FMAT No. 28 of 2026, is allowed, thereby condoning the delay in preferring the same.

20. Similarly, CAN 1 of 2026 with regard to FMAT No. 27 of 2026 is also allowed, thereby condoning the delay in preferring the said appeal.

21. There will be no order as to costs.

Re: FMAT No. 27 of 2026
with
FMAT No. 28 of 2026
+
CAN 2 of 2026

22. The present appeals will be heard on the grounds taken in the memoranda of appeal and are accordingly admitted.

23. In view of short points involved, we take up the appeals for hearing along with the connected applications.

24. FMAT No. 28 of 2026 has been preferred against an ad interim order of injunction, whereas FMAT No. 27 of 2026 assails the order whereby the parent ad interim order was extended.

25. Learned counsel for the appellant argues that the learned trial Judge acted without jurisdiction in

passing the ad interim order of injunction on two-fold grounds.

26. First, from the averments made in the plaint as well as the clauses of the tenancy agreement relied on by the plaintiff/respondent no. 1, the dispute raised in the suit evidently comes within the purview of a “commercial dispute” as contemplated in the Commercial Courts Act, 2015 (in short “the 2015 Act”). Although the suit has been arbitrarily valued less by the plaintiff / respondent no.1, it is argued that Section 12 of the 2015 Act governs the valuation of such suits.

27. Since the relief sought in the suit relates to an immovable property and to rights therein, the market value of the immoveable property ought to have been the touchstone on which the suit was to be valued.

28. Going by such standard, the suit ought to have been filed as a commercial suit.

29. However, the learned trial Judge acted in ordinary civil jurisdiction and passed the order of injunction.

30. Secondly, it is argued that the injunction in respect of construction has been granted beyond the relief sought in either the plaint or of the temporary injunction application, where no such prayer was made.

31. Learned counsel appearing for the respondent nos. 2 to 6 argues that as per the valuation as

disclosed in the plaint, the same is below the specified value as contemplated in the 2015 Act. Even otherwise, it is submitted that the nature of the reliefs sought do not pertain to commercial disputes.

32. Learned counsel also submits that the present impugned orders, being ad interim orders, are not appealable, since Order XLIII Rule 1(r) of the Code only contemplates appeals against orders passed under Order XXXIX Rules 1 and 2 of the Code.

33. Thirdly, it is argued that in view of the averments made in the plaint, particularly in paragraph no. 7 thereof, as to the nature of activities being sought to be carried out by the appellant, which is hampering the possession of the plaintiff/respondent no. 1, the learned trial Judge was justified in granting ad interim injunction in respect of construction to protect such possession of the plaintiff/respondent no. 1.

34. Upon hearing learned counsel for the parties, we find that from the averments made in the plaint as well as relief sought therein that it *prima facie* transpires that the dispute raised in the suit comes within the contemplation of commercial disputes, as defined in Section 2(1)(c)(vii) of the 2015 Act.

35. As per the said provision, “commercial dispute” means a dispute arising out of an agreement relating to immovable property used exclusively in trade or commerce.

36. In paragraph no. 3 of the plaint, it has been stated that after execution of the tenancy agreement, the plaintiff is possessing and enjoying the suit property uninterruptedly and utilized the same as a godown of his trade products in the name and style of M/s. Uttam Shoe & Chappal.

37. From the clauses of the tenancy agreement, which has been referred to in and annexed with the plaint, it is also clear that the tenancy was already a “shop room” prior to the agreement being entered into and has been granted for the purpose of running a commercial endeavour by the plaintiff/respondent no. 1.

38. From the schedule of the tenancy agreement and the suit, we find that the suit property is comprised of one three-storied building at 67, College Street, Police Station - Amherst Street, Kolkata- 700 073, which evidently carries a market value much above Rs.3,00,000/-, which is the threshold limit of specified value for the City Civil Court at Calcutta.

39. Section 12(c) of the 2015 Act provides that the specified value of the subject matter of the commercial dispute in a suit, where the relief sought relates to immovable property or to a right therein, is the market value of the immovable property, which shall be the yardstick of such valuation.

40. Thus, whatever might have been attributed as valuation in the plaint by the plaintiff/respondent no.1,

by operation of Section 12 of the 2015 Act, the subject matter of dispute in the suit goes above the specified value even at a *prima facie* glance of the pleadings made in the plaint and the related documents.

41. Hence, at least at a *prima facie* level, the learned trial Judge, acting in ordinary civil jurisdiction, could not have entertained the suit, which is not framed as a commercial suit, and have granted an interim injunction.

42. There is a gulf of difference between the modalities applicable to a commercial suit under the 2015 Act and an ordinary civil suit, including but not limited to the rigours of Section 12A of the said Act.

43. Secondly, although in paragraph no. 7 of the plaint it has been stated that the defendants are making construction at the northern side of the suit property at premises No. 68 and 68/1, College Street (which is not a part of the suit property) and have also raised a tin fence thereon apart from the common corridor and encroached the plaintiff's said shop and godown illegally, in the reliefs of the plaint and/or injunction application, the only injunction sought was in respect of interference in any manner with the plaintiff's peaceful use, possession and enjoyment of the tenanted suit property and from transferring the tenanted suit property to any third party.

44. There is no direct nexus established between the construction being made on the appellant's plot at premises No. 68 and 68/1, College Street, Police Station- Amherst Street, Kolkata- 700 073 and the disturbance to the possession and enjoyment of the plaintiff/respondent no. 1.

45. Moreover, the trial Court acted *de hors* jurisdiction by granting a relief which is not even sought for either in the plaint or in the temporary injunction application itself.

46. Even otherwise, the prudent course of action of the trial court would have been to allow the application for local inspection, which has already been filed by the appellant in the trial court, in order to ascertain whether the construction is being made on the suit property at the behest of the appellant and/or the construction, if any, taking place on the appellant's property at premises No. 68 and 68/1, College Street, is in any manner instrumental in disturbing the possession of the respondent no. 1 at the suit premises. In the absence of the same, no direct nexus can be established between the prayers of the injunction application and/or the said construction and the possession of the plaintiff/respondent no. 1.

47. In such view of the matter, the learned trial Judge acted without jurisdiction and erred in law in

granting injunction beyond the prayer made in the temporary injunction application itself.

48. By the above logic, the extension of the parent order cannot also be sustained.

49. As to the maintainability of the appeals, Order XLIII Rule 1 (r) of the Code of Civil Procedure provides for appeals against orders passed under Order XXXIX Rules 1 and 2 of the Code. Even an ex parte ad interim order of injunction or an order extending the same are orders passed under Order XXXIX Rules 1 and 2 and, thus, appealable.

50. Hence, FMAT No. 28 of 2026 is allowed on contest, thereby setting aside the impugned order, bearing Order No. 2 dated October 17, 2025 passed by the learned Judge, Vacation Bench, City Civil Court, Calcutta, in Title Suit No. 2366 of 2025.

51. Similarly, FMAT No. 27 of 2026 is also allowed on contest, thereby setting aside the order impugned therein, bearing Order no. 5 dated December 11, 2025 passed by the learned Judge, Tenth Bench, City Civil Court, Calcutta in Title Suit No. 2366 of 2025.

52. The application for stay, bearing CAN 2 of 2026, filed in connection with FMAT No. 28 of 2026, stands disposed of as well in the light of the above observations.

53. It is expected that the learned trial Judge shall dispose of the pending application under Order XXXIX Rule 7 of the Code of Civil Procedure as

expeditiously as possible and thereafter decide the temporary injunction application itself at the earliest.

54. The appellant shall file its written objection to the injunction application within May 22, 2026.

55. In view of the above order, the pending application under Order XXXIX Rule 4 of the Code filed by the appellant is rendered infructuous and is accordingly deemed to stand disposed of.

56. There will be no order as to costs.

(Biswaroop Chowdhury, J.) (Sabyasachi Bhattacharyya, J.)