Form No. J(2)

In the High Court at Calcutta
Civil Appellate Jurisdiction
Appellate Side

Present: The Hon'ble Justice Sabyasachi Bhattacharyya
And
The Hon'ble Justice Biswaroop Chowdhury

FMA 433 of 2026
with
CAN 1 of 2026

Smt. Jharna Banerjee and Anr.
Vs.
Mr. Mantu Das and Ors.

For the appellants	:	Mr. Shyamal Chakraborty, Mr. Kajal B. Chattopadhyay, Ms. Aheli Ghoshal, Ms. Trisha Sinha Pal, Mr. Achintya Kumar Mukherjee, Advs.
For the respondent no.1	:	Mr. Debjit Mukherjee, Mr. Kaustav Bhattacharya, Ms. Priyanka Jana, Ms. Shruti Agarwal, Advs.
Heard on	:	13.05.2026
Judgment on	:	13.05.2026

Sabyasachi Bhattacharyya, J.:-

1. The question involved in the appeal is very short. The appeal is admitted to be heard on the grounds taken in the memorandum of appeal and is taken up for hearing on consent of the parties.

2. The defendant nos. 1 and 2 in a suit for specific performance of contract, being the owners of the subject property, have preferred the present appeal against an order of temporary injunction passed by the learned Trial Judge in a suit filed by the plaintiffs/respondent no. 1 for specific performance of a contract entered into allegedly on behalf of the defendant nos. 1 and 2/appellants by the defendant nos. 3 and 4 (respondent nos. 2 and 3 herein) with the plaintiffs/respondent no. 1 on the strength of an alleged power of attorney executed by the appellants.

3. Learned counsel for the appellants argues that due to ill conduct of the defendant nos. 3 and 4, although initially an agreement for sale was entered into by the appellants with the said respondents, along with a power of attorney being executed, subsequently such registered power of attorney as well as the agreement for sale between the defendant nos. 1 and 2/appellants and the defendant nos. 3 and 4/respondent nos. 2 and 3 were mutually cancelled.

4. However, during the entire period up to such cancellation, the respondent nos. 2 and 3 never disclosed to the appellants that in the interregnum they had purportedly executed an agreement for sale in respect of the subject property in favour of the plaintiffs/respondent no. 1, allegedly on the strength of the power of attorney executed by the appellants in favour of the respondent nos. 2 and 3.

5. It is argued upon such fraud being discovered, the appellants lodged a complaint with the police. It is further alleged that the appellants did not receive a single paisa of the purported consideration amount which is claimed to have been paid by the respondent no. 1 to the respondent nos. 2 and 3.

6. Learned counsel for the appellants further argues that from the bank statements of the respondent no. 1, it would be evident that there were mutual monetary transactions between the said respondent and the respondent nos. 2 and 3, which indicate patent collusion between the said respondents.

7. Learned counsel appearing for the respondent no. 1, who is the primary contesting respondent, controverts the arguments made by the appellants and submits that the agreement for sale in favour of the respondent no. 1 was executed at a point of time when the registered power of attorney granted by the defendant nos. 1 and 2/appellants in favour of the respondent nos. 2 and 3 was very much subsisting. That apart, the respondent no. 1, being the plaintiff, has already made substantial payment of the consideration amount pursuant to the said agreement.

8. Thus, it is contended that the cause of action sought to be raised in the written objection of the appellants does not have any germane bearing on the reliefs sought in the suit, in view of the agreement with the plaintiffs/respondent no. 1 having been executed during subsistence of the power of attorney. At

best, it is submitted, the relief of the appellants lies against the respondent nos. 2 and 3 and not against the respondent no. 1.

9. It is further submitted by learned counsel for the plaintiff/respondent no. 1 that there is nothing on record to substantiate the allegation that there were mutual monetary transactions between the respondent no. 1 and respondent nos. 2 and 3. On the contrary, it is submitted that it is the respondent no. 1 who unilaterally made the payments pursuant to the agreement in favour of the respondent nos. 2 and 3, who accepted the same on behalf of the defendant nos. 1 and 2/appellants.

10. Upon considering the submissions of parties, we find that none of the averments made in the written objection of the appellants, which contains serious allegations of fraud and collusion, was adverted to by the learned Trial Judge while passing the impugned order of temporary injunction.

11. The impugned order, although it pays lip-service to the three cardinal tests of grant of injunction, does not specifically advert to any of the grave allegations levelled in the written objection of the appellants, nor is any clear reason given in the impugned order as to how the learned Trial Judge came to the conclusion that a *prima facie* case has been established for grant of injunction.

12. Thus, the impugned order cannot be sustained on such count alone, even without entering into the merits of the respective contentions of the parties.

13. At this juncture, on the query of Court, we are informed that there was a subsisting order of injunction during the pendency of the temporary injunction application in the Trial Court.

14. Hence, we are of the opinion that substantive justice would be sub-served if the temporary injunction application is remanded to be heard afresh by the learned Trial Judge and in the interregnum, the interim order which was already subsisting during pendency of the same is revived till the date of fresh disposal of the temporary injunction application.

15. Accordingly, FMA 433 of 2026 is allowed on contest against the plaintiff/respondent no. 1, thereby setting aside the impugned order dated December 12, 2025 passed by the learned Civil Judge (Senior Division), Third Court at Howrah in Title Suit No. 528 of 2023 and remanding the temporary injunction application to the learned Trial Judge for a fresh hearing on merits. It is made clear that the learned Trial Judge shall re-adjudicate the injunction application and dispose of the same by passing a reasoned order, considering and adverting to the disputes raised by both the parties in their temporary injunction application and written objection respectively and the annexures thereto.

16. It is expected that the temporary injunction application shall be disposed of afresh in terms of this order as expeditiously as possible, preferably within June 30, 2026.

17. During pendency of the temporary injunction application before the learned Trial Judge, the defendant nos. 1 and 2/appellants shall remain restrained by an order of injunction from selling, transferring and alienating the suit property in favour of third parties in any manner whatsoever.

18. We make it abundantly clear that we have not touched upon the merits of the respective contentions of the parties and it will be open to the learned Trial Judge to decide the temporary injunction application afresh on its own merits, independently and without being unduly prejudiced in any manner by any of the observations made above.

19. CAN 1 of 2026 is disposed of accordingly.

20. There will be no order as to costs.

21. Urgent Photostat certified copies of this judgment, if applied for, be issued to the parties subject to compliance of due formalities.

(Sabyasachi Bhattacharyya, J.)

I agree.

(Biswaroop Chowdhury, J.)

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(SSS)