

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 Supratim Bhattacharya

F.M.A. 188 of 2023
IA No: CAN 1 of 2023

Sailen Kumar Sadhukhan
Vs.
Sudama Pandit and another

For the appellants	:	Mr. Biplab Ranjan Bose Mr. Souvik Sarkar
For the respondent No.1	:	Mr. Animesh Paul Ms. Manisha Kr. Upadhyay
Heard on	:	13.01.2026
Judgment on	:	13.01.2026

Sabyasachi Bhattacharyya, J.:-

1. Receipt of service of notice filed today be kept on record.
2. The present appeal has been preferred against an order whereby an injunction application passed by the plaintiff/respondent no.1 was allowed, thereby directing both parties to maintain status quo with regard to nature, character and creation of third

party interest in respect of the suit property till disposal of the suit.

- 3.** Learned counsel for the defendant/appellant/owner argues that despite a written objection having been filed by the defendant/appellant prior to the disposal of the injunction application, the same was not considered and the learned Trial Judge proceeded to decide the injunction application on the premise that no written objection had been filed by the defendant/appellant, by virtually adopting the doctrine of non-traverse.
- 4.** Learned counsel further argues that in view of the construction work being stalled by the developer/plaintiff/respondent no.1, the power of attorney granted by the appellant in favour of the plaintiff/respondent no.1 was revoked.
- 5.** Moreover, the sanction plan obtained by the plaintiff/respondent no.1, it is alleged, has lapsed in the meantime.
- 6.** Learned counsel appearing for the plaintiff/respondent no.1 argues, by placing reliance on the order dated December 20, 2022 passed by the learned trial Judge, a copy of the certified copy of which has been annexed to the connected stay application, that the said date was already fixed for passing of final orders by the learned Presiding Judge of the trial court when the written objection was filed.

7. Since hearing had already been concluded, the mere formality of passing of an order was left and, as such, the learned Trial Judge rightly did not take into consideration the written objection.
8. Secondly, it is disputed that the sanction plan has lapsed.
9. Learned counsel for the respondent no.1 submits that due to the defendant/appellant having revoked the power of attorney granted to the developer/respondent no.1 and entered into a fresh development agreement with a third party, the plaintiff was compelled to file the present suit.
10. In any event, it is argued that a *prima facie* case for grant of injunction has been made out.
11. Since questions of both fact and law are involved, we admit the appeal and take it up for final disposal, in view of the ambit of adjudication being short.
12. On a perusal of the order dated December 20, 2022, it appears that the defendant/appellant had indeed filed a written objection to the injunction application on the said date.
13. Although the hearing of the injunction application had already been concluded by then, which is evident from the recording in the order dated December 20, 2022 (when the regular Presiding Officer of the Court was absent) that the injunction application was fixed for passing “final order”, fact remains that when the

regular Presiding Officer of the concerned Court returned and passed the impugned order disposing of the injunction application on November 1, 2023, the written objection was already on record.

- 14.** Since about a month and a half had passed between the filing of the written objection and passing of the final order of injunction, the ends of justice demanded that the learned Trial Judge take into consideration such written objection before disposing of the injunction application.
- 15.** Even otherwise, the arguments made by the appellant give rise to triable issues and as such, we are of the opinion that the matter should be remanded to the learned Trial Judge for taking into consideration the written objection and disposing of the injunction application afresh; however, in the meantime, since a *prima facie* case has been made out, the parties ought to be restrained by an order of status quo in terms of the impugned order.
- 16.** Accordingly, FMA 188 of 2023 is partially allowed, thereby setting aside the impugned order dated February 1, 2023 passed by the learned Civil Judge (Senior Division), Second Court at Howrah in Title Suit No.383 of 2019 and remanding the injunction application to the trial court for a fresh consideration of the injunction application as well as the written objection filed

by the defendant/appellant to the injunction application on merits.

- 17.** The learned Trial Judge shall give an opportunity of hearing to both parties and dispose of the injunction application afresh as expeditiously as possible, positively within four weeks from the date of communication of this order to the learned Trial Judge.
- 18.** It is made clear that we have not entered into the merits of the contentions of the parties in respect of the injunction application and it will be open to the learned Trial Judge to independently decide the same without being prejudiced in any manner by any of the observations made herein or in the order impugned before us.
- 19.** Since learned counsel for the plaintiff/respondent no.1 submits that the suit is already on the peremptory board, we expect the timeline given by us for disposal of the injunction application to be adhered to strictly.
- 20.** Upon disposal of the injunction application, the learned Trial Judge shall proceed with the hearing of the suit and make all efforts to dispose of the same as well at the earliest.
- 21.** In view of a *prima facie* case having been made out insofar as the *ad interim* stage is concerned, we direct the parties and/or their men and agents to maintain status quo with regard to nature, character and creation of third party interests in respect of the

suit property or any part thereof till disposal of the temporary injunction application by the learned Trial Judge.

22. CAN 1 of 2023 is also disposed of consequentially.

23. There will be no order as to costs.

24. Urgent photostat copies of this order, if applied for, be given to the parties upon compliance of all requisite formalities.

(Sabyasachi Bhattacharyya, J.)

I agree.

(Supratim Bhattacharya, J.)

AD-29
AK