D/L.85.
April 9, 2026.
MNS.

FMAT No. 112 of 2026
+
CAN 1 of 2026

JHM Import Export (P) Ltd.
Vs.
Asit Baran Dey and others

Mr. Abhishek Halder,
Mr. Omar Faruk Gazi,
Ms. Bidisha Das,
Ms. Madhurima BAsu,
Mr. Debabrata Halder, Advs.

… for the appellant.

1. The present appeal has been preferred by the first defendant in a suit, couched as a declaratory suit but also seeking mandatory injunction on the defendants to act in terms of an agreement entered into between the parties, whereby the defendant no. 1/appellant apparently agreed to sell the sand excavated by the appellant from the location-in-question to the plaintiff/respondent no. 1.

2. Learned counsel appearing for the appellant argues that it will be evident from the agreement (though captioned as “Sale Deed”) dated January 31, 2023, on which the plaintiff/respondent no. 1 relies, that the defendant no. 2 is a partner of the plaintiff and, as such, the said partnership firm being unregistered, the suit is barred under Section 69 of the Indian Partnership Act, 1932.

3. It is further contended that by dint of the provisions of Section 202 of the Indian Contract Act, 1872, an agency cannot be terminated if an interest of the agent has been created in the subject property.

4. It is further argued that the appellant is losing huge amounts of money day-to-day since the excavation work in respect of the sand is being stalled by taking undue advantage of the impugned order.

5. Insofar as the last issue raised by the appellant is concerned, we find from a bare perusal of the ordering portion of the impugned *ex parte* ad interim order that the defendant no. 1/opposite has been restrained only from selling the sand “to be excavated” from Ghat No. 0121DM023 to any other person than the plaintiff, as per the agreement-in-question.

6. Thus, there is no restraint order regarding excavation *per se* but only regarding selling sand which will be excavated by the defendant no.1/appellant.

7. As such, it cannot be said that the appellant is adversely affected for stoppage of excavation, at least in terms of the impugned ad interim order.

8. Secondly, it is not *ex facie* clear from the plaint and/or the agreement for sale, on which the plaint relies, that there is a partnership firm, which is required to be registered in law, comprised of the plaintiff and the defendant no. 2.

9. Although such question is arguable, since in the descriptive portion of the agreement, defendant no. 2, namely, Arif Molla, has been described as a “Partner/Authorised Representative” of the plaintiff, as to whether there is a partnership firm or not, the alternative argument also available from such description is that the defendant no. 2 is merely an agent of the plaintiff, in which premise the plaint also proceeds.

10. It is well-settled that at the stage of consideration of ad interim prayers, the court is only to go by the pleadings in the plaint and the temporary injunction application and the documents annexed and/or relied on thereto.

11. Going by such yardsticks, we do not find that the suit is *ex facie* bad, although it is open to the defendant no. 1/appellant to advance such arguments at further stages of the suit and the injunction application.

12. Insofar as Section 202 of the Indian Contract Act, 1872 is concerned, the same pertains to termination of agency and is only material in-between the principal and the agent (the plaintiff and the defendant no. 2 in the present case).

13. Thus, the said provision does not come to the aid of the appellant, insofar as the present appeal is concerned, in any manner whatsoever.

14. The third ground which has been raised before us is that at a previous stage, when injunction was refused to the plaintiff on the ground of bar under Section 80 of the Code of Civil Procedure, a coordinate Bench of this Court had observed in an appeal against such refusal that in the event the names of the State authorities/instrumentalities are deleted from the plaint, as no effective relief had been sought against them, the plaintiff would be at liberty to renew his prayer for injunction.

15. In the same order, it was also recorded that if so made, the learned trial Judge shall consider such fresh application for ad interim orders “upon hearing both parties”.

16. From the recording of the impugned order itself by the learned trial Judge, we find that the plaintiff/petitioner sent a copy of the fresh injunction application through registered post on the defendant no. 1/appellant on March 11, 2026 and as per the postal track consignment report, the defendant no.1/appellant received the same on the same date.

17. Thus, it cannot be argued that the defendant no. 1/appellant was not given any opportunity of hearing as such.

18. Hence, the present appeal cannot be sustained on any of the grounds taken by the appellant.

19. Accordingly, FMAT No. 112 of 2026 is dismissed under Order XLI Rule 11 of the Code of Civil Procedure.

20. CAN 1 of 2026 is also disposed of consequentially.

21. It is made clear that the above findings are tentative and it will be open to both parties to canvass all issues required to be urged by them independently without being influenced by any of the observations made hereinabove.

22. If the defendant no. 1/appellant files its written objection to the injunction application within a fortnight from date, the learned trial Judge shall make endeavour to dispose of the injunction application as expeditiously as the business of the said court permits.

23. The above directions shall not be a bar to the learned trial Judge to first adjudicate the other applications pending at present at the behest of either party.

24. There will be no order as to costs.

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