D/L.15.
November 12, 2026.
MNS.

FMAT No. 324 of 2026
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CAN 1 of 2026
+
CAN 2 of 2026

Sekh Matiyar Rahaman and another
Vs.
Sri Jayanta Karuri and others

Mr. Prosenjit Mukherjee,
Mr. Ziaul Haque, Advs.

… for the appellants.

Mr. Subir Sabud,
Mr. Surajit Maity,
Ms. Tina Biswas, Advs.

…for the respondent nos. 1 and 2.

Re : CAN 1 of 2026 (condonation)

1. The affidavit-of-service filed today be kept on record.

2. The ground taken in the condonation application is primarily that initially an appeal was filed against the impugned order, passed under Order XXXIX Rules 1 and 2 of the Code of Civil Procedure, before the concerned District Court, which was duly admitted.

3. However, subsequently, it was discovered that the said Court did not have pecuniary jurisdiction to take up the appeal and the appeal was dismissed.

4. The appellants preferred a revisional application against such dismissal but subsequently withdrew the same on legal advice and have preferred the present appeal against the original order.

5. Upon hearing learned counsel for the parties, we find sufficient explanation for the delay having been furnished, inasmuch as the appellants erroneously proceeded before a wrong forum. The *bona fides* of the appellants in doing so was borne out by the fact that such erroneous challenge was initially admitted by the concerned Court.

6. Hence, CAN 1 of 2026 is allowed, thereby condoning the delay in preferring FMAT No. 324 of 2026.

7. There will be no order as to costs.

Re: FMAT No. 324 of 2026

8. The appeal is now taken up for hearing under Order XLI Rule 11 of the Code of Civil Procedure.

9. The appeal is admitted to be heard on the grounds taken in the memorandum of appeal.

10. On consent of the parties, we take up the appeal itself for hearing.

11. The short question involved is whether the learned Trial Judge was justified in refusing ad interim injunction in a suit for specific performance of contract filed by the plaintiffs/appellants.

12. Learned counsel appearing for the appellants submits that the learned Trial Judge recorded in the impugned order that a notarized agreement for sale dated May 22, 2025 was produced before the court along with Xerox copies of Aadhaar Card, Advocate’s letter dated November 21, 2025 and postal receipts and reply.

13. However, no injunction was granted on the ground that no document was produced by the plaintiffs to show that they took initiative to comply with the terms and conditions of the agreement within the stipulated period.

14. Learned counsel appearing for the defendants/respondents submits that the plaintiffs failed to show that they have acted in terms of the agreement between the parties or even performed their part of the contract.

15. It is submitted that the agreement-in-question contained a clause that a further sum of Rs. 2,00,000/-, over and above the advance amount of equivalent sum, was to be paid by the plaintiffs within two months from the execution of the agreement. However, there is nothing in the pleadings or the materials before the Trial Court to indicate that any such payment was made.

16. Moreover, the first letter apparently written by the plaintiffs to the defendants, which has been relied on in the plaint and injunction application, was of the month of November, 2025, that is, about four months after the agreement, which itself indicates the lack of urgency.

17. Furthermore, it is argued that the plaintiffs have also failed to show that any attempt has been made by the defendants/respondents to transfer the property in favour of third parties.

18. Insofar as submits that there is no proof of possession being handed over to the appellants and it is also absurd that upon payment of a paltry sum of

Rs.2,00,000/- only, possession would be handed over, taking into account the much higher consideration amount.

19. Upon perusing the materials on record and hearing learned counsel for the parties, we find that in the injunction application and the plaint, sufficient averments as to urgency have been made out.

20. Moreover, a notarized agreement for sale was produced by the appellants.

21. In a suit for specific performance of contract, as per the proviso to Section 49 of the Indian Registration Act, 1908, the contract-in-question is not required to be registered to be taken cognizance of or produced in evidence as proof of such agreement.

22. Thus, the learned Trial Judge erred in law in overlooking the legal effect of the agreement produced by the plaintiffs/appellants, despite the same being unregistered.

23. However, fact remains that no specific document was produced to indicate that possession of the property was handed over at any point of time in favour of the appellants.

24. With regard to the alleged non-payment of the additional amount of Rs. 2,00,000/- in terms of the agreement, we find sufficient averments in the plaint and the injunction application that the plaintiffs were always ready and willing to pay the rest consideration amount to the defendants and that they had given verbal intimations

to the respondents repeatedly, requesting the latter to execute a registered deed of conveyance.

25. At the ex parte stage of consideration of ad interim injunction, it is the pleadings on oath of the plaintiffs which are required to be looked into by the court for coming to a conclusion, since at that stage the defendants do not have any opportunity of placing their version before the court.

26. Proceeding from such perspective, a sufficiently strong prima facie case has been made out for grant of injunction with regard to the creation of third party interest.

27. However, at this stage, in consonance with the arguments of the defendants, we do not find any positive case of handing over possession in favour of the plaintiffs being made out.

28. Accordingly, FMAT No. 324 of 2026 is partially allowed on contest, thereby modifying the impugned order dated January 30, 2026 passed by the learned Civil Judge (Senior Division), First Court at Howrah in Title Suit No. 41 of 2026 to the effect that the defendants in the suit shall remain restrained by an order of injunction from selling, transferring, alienating and/or creating any third party interest in respect of the property, which is the subject matter of the disputed agreement, till disposal of the temporary injunction application by the Trial Court.

29. The defendants shall file their written objection(s) to the injunction application in the Trial Court as expeditiously as possible, preferably within a fortnight from date.

30. In the event such timeline is adhered to by the defendants, it is expected that the learned Trial Judge shall dispose of the temporary injunction application itself by the end of December, 2026.

31. We make it clear that the merits of the respective contentions of the parties have not been conclusively decided by this Court and it will be open to the learned Trial Judge to decide the temporary injunction application on its own merits without being unduly influenced by the observations made above.

32. Consequentially, CAN 2 of 2026 is disposed of as well.

33. There will be no order as to costs.

34. Urgent Photostat certified copies of this judgment, if applied for, be issued to the parties upon compliance of requisite formalities.

(Md. Shabbar Rashidi, J.) (Sabyasachi Bhattacharyya, J.)