

20.05.2026
Ct. No.6
Sl. No.5
skg

C.O. 4235 of 2025

**Union of India & Ors.
Vs.
M/s. Dynamic International**

Mr. Ashok Kr. Chakraborty, Ld. ASG,
Mr. R. L. Bag, Sr. Adv.
Mr. Ashutosh Pathak,
Mr. Piyas Chowdhury,

...for the Petitioners

Mr. Sanjib Kr. Mukhopadhyay,
Ms. Nargish Parveen,

...for the opposite party

1. At the outset, it is submitted by Mr. Bag, learned Senior Advocate appearing for the petitioner that his name has been wrongly recorded in the order dated May 18, 2026.
2. Let the name of Mr. Bag be corrected as R.N. Bag in the said order dated May 18, 2026. Department is directed to make necessary correction.
3. This revisional application is directed against the orders dated September 10, 2025 and November 28, 2025 passed by the learned District Judge, Paschim Medinipur in Misc. Appeal no. 48 of 2025.
4. By the order dated September 10, 2025 the learned District Judge has directed the appellant to unlock the suit stalls as described in the schedule of the application to enable the appellant to carry on the business till disposal of the Misc. Appeal.

5. By the order dated November 28, 2025 a direction has been passed on the police authorities to provide police assistance to the opposite party for the purpose of implementation of the order dated September 10, 2025.
6. The opposite party has instituted Other Suit no. 52 of 2024 before the learned Civil Judge (Jr. Div.) Kharagpur, Paschim Medinipur praying inter alia, for a decree of declaration, mandatory injunction and permanent injunction.
7. In the said suit, an application for temporary injunction was filed. Initially an interim order of injunction was granted by the learned Trial Court, however, upon a contested hearing the learned trial court vacated the said interim order of injunction and rejected the petitioner's application for temporary injunction under Order 39 Rules 1 and 2 of the Code of Civil Procedure.
8. Assailing the said order the opposite party has approached the learned District Judge, Paschim Medinipur by filing Misc. Appeal no. 48 of 2025. In the said Misc. Appeal the opposite party filed an application under Section 151 of the Code of Civil Procedure, 1908 praying for a mandatory order of injunction directing the petitioner to break open the pad lock of the suit stalls. Such order was granted on September 10, 2025.
9. Thereafter, alleging violation of the aforesaid order another application under Section 151 of the Code of

Civil Procedure was filed by the opposite party which has been disposed of by the order dated November 28, 2025 thereby directing the police authorities to render assistance to the opposite party with a view to implement the earlier order dated September 10, 2025.

10. Feeling aggrieved by the aforesaid orders dated September 10, 2025 and November 28, 2025 the petitioners have approached this Court by filing the present revisional application.

11. Mr. Chakraborty, learned Additional Solicitor General of India submits that the orders impugned are wholly without jurisdiction inasmuch as, a mandatory order of injunction could not have been granted by the learned appellate court in an appeal carried from an order refusing to grant injunction. It is further submitted that the mandatory order of injunction is one of the main prayers in the suit and by passing such order, the learned appellate court has in fact granted final relief at the interim stage.

12. It is further submitted that the petitioners have taken possession of the suit stalls in exercise of the power conferred on the railway authorities under Section 145 of the Railways Act.

13. It is further submitted that the learned Appellate Court has relied on a document which was not there in the plaint at all.

14. Mr. Mukherjee, learned Advocate appearing for the opposite parties fairly submits that the document that has been relied on by the learned Appellate Court came into existence subsequent to the institution of the suit, and that the said document therefore does not form part of the suit.
15. Having heard the learned Additional Solicitor General appearing for the petitioner and Mr. Mukherjee learned Advocate for the opposite parties and having perused the material on record, this court is of the view that the orders impugned do suffer from jurisdictional errors.
16. It is evident that by the order dated January 3, 2023 the prayer for injunction made by the opposite party was rejected on contest. Subsequent to the said order declining the petitioners' prayer for injunction, on January 7, 2023 the opposite parties have taken possession of the suit stalls on January 7, 2023 in exercise of their power under Section 145 of the Railways Act. The learned Appellate Court has by the order impugned sought to restore *status quo ante* on the basis of a document dated April 07, 2025 that has been brought to the notice of the said Court for the first time by the plaintiff/appellant itself. Admittedly the said document does not form part of the plaint.
17. While it is true that as an Appellate Court it would have powers akin to that of the Original Court under Section

107 of the Code and it would also have powers to take additional evidence under Order 41 Rule 27 of the Code but it must also be remembered that the present appeal is one from an order of refusal to pass injunction in favour of the petitioner and after such order there have been certain developments which may require deeper probes. In any case even if power to take additional evidence is presumed to be exercised, the same could have been justifiably exercised only at the time of hearing of the appeal itself after giving full opportunity to the petitioner and upon being satisfied as regards the due diligence exercise of the opposite party.

18. For all the reasons aforesaid, the learned Appellate Court cannot be said to be justified in taking into consideration the document which was not there before the learned trial Court at the hearing of the appeal.

19. It appears that the order dated September 10, 2025 is solely based on the said document. Furthermore, there is substance in the submission made by the learned Additional Solicitor General that final relief has been granted by the learned Appellate Court at the ad interim stage in the appeal. The same could not have been done by the learned Appellate Court so lightly.

20. In view of the aforesaid the order dated September 10, 2025 stands set aside.

21. The order dated November 28, 2025 is a consequential order which is based on the order dated September 10, 2025 since the order dated September 10, 2025 has already been set aside the substantial order does not survive. The same also stand set aside.

22. However, it is made clear the observations made hereinabove, for the purpose of disposal of the present revisional application are only *prima facie* and the learned Appellate Court shall decide the appeal on its own merit on the basis of the materials on record including documents produced by the parties before the learned Trial Court and dispose of the same as expeditiously as possible and preferably within a period of two months from the next date fixed without granting any unnecessary adjournment.

23. With the above observation the present revisional application being C.O. 4235 of 2025 stands disposed of. There shall be no order as to costs.

24. Urgent photostat certified copy of this order, if applied for, be supplied to the parties subject to compliance with all requisite formalities.

(Om Narayan Rai, J.)