In the High Court at Calcutta

Civil AppellateJurisdiction

Appellate Side

Present :-

The Hon'ble Justice Sabyasachi Bhattacharyya

and

The Hon'ble Justice Supratim Bhattacharya

Case No.

FMAT 511 of 2025
with
CAN 2 of 2025

In the matter of :

SALMA KHATOON& ORS.

...Appellants

VS.

SK. NASIRUDDIN

... Respondent

For the Appellants	:	**Mr. Tanmoy Mukherjee** **Mr. Kajal Ray** **Mr. Rudranil Das** **Mr. Suman Nandi** ....Advocates
For the Respondent	:	**Mr. Avirup Chatterjee** **Mr. Rishov Das** ....Advocates
Heard on	:	**24.02.2026**
Judgment on	**:**	**February 24, 2026.**

Sabyasachi Bhattacharyya, J. :-

1. In view of the short points involved, the appeal along with the application are taken up for hearing on the basis of the papers before us.

2. The issue involved in the appeal is whether the learned Trial Judge was justified in passing an order of ex parte ad interim*status quo* at the behest of the respondent/developer/plaintiff in a suit for declaration that the purported development agreement between the parties is existing and binding and a decree declaring the right of the plaintiff/respondent to develop the property based on the said agreement dated January 9, 2020, along with consequential reliefs.

3. Learned counsel appearing for the appellants submits that the learned Trial Judge erred in law in relying on the so-called development agreement, in view of the fact that the same is not a registered document. Learned counsel takes the Court through the different clauses of the said agreement and seeks to impress upon the Court that it is evident from different clauses thereof as well as Schedule-C thereof, which describes the developer's allocation, that right, title and interest *in praesenti* was transferred in favour of the developer/plaintiff by dint of the said agreement, thereby bringing it within the four corners of Section 17(1)(b) of the Registration Act, 1908. It is submitted that by dint of Section 49 of the said Act, no document required under Section 17 to be registered shall affect any immovable property comprised therein unless it is so registered. Learned counsel also relies on Section 23 of the Registration Act, which stipulates four months from the date of executionas the outer time limit for registering documents. In the present case, since the agreement was executed admittedly on January 9, 2020, such limitation period is also long over.

4. Secondly,it is argued, by placing reliance on certain photographs annexed to the stay application filed in the present appeal, that substantial construction has already been effected through a different developer than the plaintiff/respondent at the behest of the appellants/owners, due to the alleged inaction of the respondent in developing the suit property.

5. Hence, it is argued that adequate remedy is available to the plaintiff/respondent in the form of damages and, as such, the learned Trial Judge ought not to have granted injunction.

6. Learned counsel appearing for the respondent controverts such arguments and submits that it is evident from the developer's agreement that it cannot be said beyond doubt that immediate transfer of title in the property was thereby effected in favour of the respondent.

7. It is further argued that the documents sought to be relied on by the appellants were not a part of the records before the learned Trial Judge when the impugned ad interim order was passed.

8. Learned counsel for the appellants, in support of his contentions, cites a three-Judge Bench decision of this Court in the matter of **Ashok Kumar Jaiswal &Ors. vs. Ashim Kumar Kar&Ors.**reported at **(2014) 2 MWN (Civil) 673**.

9. Upon hearing learned counsel for the parties, we find that in the cited report, it was held by the Larger Bench that in law, a development agreement of the kind described therein entails transfer of immoveable property in the sense that the developer or the assignee of a developer, at the instance of a developer, would be entitled not only to a part of the constructed area but the proportionate share of the land on which the construction is made.

10. In the present case, learned counsel for the appellants has placed much reliance on the description of the developer's allocation described in Schedule-C of the agreement, which also includes proportionate share of land and land underneath the building to be constructed on Schedule-A, which describes the entire property, together with all right, title, interest and right of easement attached thereto.

11. However, Schedule-C is only a description of the developer's allocated portion and not the genesis of the rights of the parties. The rights of the parties emanate from the different clauses of the agreement itself and the property defined under Schedule-C is merely the description of the developer's allocation, the rights regarding which flow from the clauses of the agreement itself.

12. A perusal of the clauses of the agreement indicates that at least an arguable case has been made out by the plaintiff/respondent as to whether there has been any transfer *in praesenti* in respect of the subject property in favour of the developer by dint of the said agreement.

13. Clause 1 of the agreement contemplates that the owners/first parties (present appellants) grant the exclusive right of *development and construction* to the developer and stipulates that the developer shall *let out* the area allocated to the developer to the intending *tenants* on Salami basis and/or *tenancy* basis. Again, clause 3 provides that the developer would be able to realize *construction costs, charges, etc.* from the intending tenants.

14. Clause 10 of the development agreement stipulates that the owners/first parties (appellants herein) shall have no right to demand "extra *rent*" at the time of *issuing rent bill* for the intending *tenants* inducted by the developer/second party. Again, clause 12 indicates that the developer may *book the flats* in respect of the developer's allocation and *accept booking money*.

15. Clause 15 of the agreement provides that the owners shall never demand any money from the developer except their allocation.

16. A composite reading of the aforesaid clauses of the agreement shows that the rights conferred thereby on the respondent-developer stops at inducting tenants, booking the flats for such limited purpose and accepting the booking money. Even as per clause 10, it is *prima facie* clear that the appellants/owners would be entitled to issue rent bills even to the tenants inducted by the developer.

17. Thus, it is arguable as to whether the developer is granted any absolute title in the property by virtue of the agreement in question. Hence, a sufficient *prima facie* triable issue is raised as to whether the agreement is required to be compulsorily registered, having fallen within the purview of Section 17(1)(b) read with Section 49 of the Registration Act.

18. As to the second limb of argument of the appellants, we cannot accept the same simply because the photographs sought to be placed before us were not before the learned Trial Judge at the time of passing of the impugned order. An ad interim prayer of injunction has to be decided at the ex parte stage only on the basis of the case made out in the injunction application and the averments made therein as well as the documents referred to in such application and the Court cannot look beyond the same for the purpose of adjudication. Hence, we have to test the legality of the impugned order as on the date of passing of the same, when neither the photographs sought to be relied on by the present appellants nor any other documents than the injunction application and its annexures were before the learned Trial Judge.

19. However, we make it abundantly clear that all the above observations are tentative and *prima facie* in nature, and it will be open to the parties to argue all points. It is further clarified that the appellants would be entitled to rely on their averments made in the application under Order XXXIX Rule 4 of the Code of Civil Procedure and annexures thereto and/or any further document if they want to rely on the same as well as any written objection, if filed to the temporary injunction application in the Trial Court, at the time of final hearing of the injunction application and/or the vacating application.

20. With the above observations, FMAT 511 of 2025 is dismissed on contest, thereby affirming the impugned order dated May 13, 2025 passed by the learned Civil Judge (Senior Division), Fifth Court at Alipore, District: South 24 Parganas in Title Suit No. 666 of 2025.

21. CAN 2 of 2025 stands disposed of accordingly.

22. There will be no order as to costs.

23. Urgent certified photostat copies of this judgment and order, if applied for, be given to the parties upon compliance of all necessary formalities.

(Sabyasachi Bhattacharyya, J.)

I agree.

(Supratim Bhattacharya, J.)

24.02.2026
Item No. DL/46
Court No. 16
Asraf, A. R. (Court)