

OD-2

IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
ORIGINAL SIDE

APO/24/2026
IA No. GA/1/2026, GA/2/2026

SABYASACHI BANERJEE
-VS-
ASHA MIRCHANDANI WATERSTREET AND ORS.

BEFORE:

The Hon'ble JUSTICE DEBANGSU BASAK

-AND-

The Hon'ble JUSTICE MD. SHABBAR RASHIDI

For the Appellant	:	Mr. Sakya Sen, Sr. Adv. Mr. Arif Ali, Adv. Mr. Subhamoy Patra, Adv. Ms. Pallavi Chatterjee, Adv.
For the Respondent No.2	:	Mr. Sarvapriya Mukherjee, Adv. Mr. Biswajit Kumar, Adv. Mr. Vidya Bhusan Upadhyay, Adv.
For the Respondent Nos.16 & 17	:	Mr. Anirban Ray, Adv. Mr. S. Ghosh, Adv. Mr. Dibesh Kr. Dwivedi, Adv.
HEARD ON	:	25.06.2026
DELIVERED ON	:	25.06.2026

DEBANGSU BASAK, J.:-

1. The appeal is at the behest of a plaintiff in a suit seeking declaration that a consent decree dated August 23, 2022 passed in separate suit is null and void.

2. Learned Senior Advocate appearing for the appellant submits that, on the date when the consent decree was passed, the Court lacked jurisdiction. The plaintiff in such suit was under Corporate Insolvency Reconstruction Programme in a proceeding pending before the NCLT, Kolkata. In support of such contention, he draws the attention of the Court to the orders passed by the NCLT and NCLAT in this regard. He submits that, there was a moratorium for the period from July 18, 2022 till the discharge of the Resolution Professional by the NCLT on April 18, 2023. The consent decree was passed during the period of the moratorium on August 23, 2022. Therefore, the consent decree is null and void.
3. Learned Senior Advocate appearing for the appellant submits that, the appellant made out a *prima facie* case and the balance of convenience and inconvenience being in favour of the appellant, learned Single Judge erred in not passing the ad interim order of injunction. He points out that, by the consent decree, an immovable property was sought to be dealt with. Such immovable property is the subject matter of a suit filed by the appellant earlier in point of time seeking specific performance of an agreement. He points out that, out of the agreed consideration of a sum in excess of Rs.14 crores, the appellant already paid a sum in excess of Rs.4 crores.
4. In response to a query of the Court, learned Senior Advocate appearing for the appellant submits that, the appellant is ready

and willing to deposit the balance consideration price in terms of the agreement on or before July 3, 2026.

5. Learned Senior Advocate appearing for the respondent nos. 16 and 17 draws the attention of the Court to the last order passed by the learned Single Judge. He submits that, the injunction petition is fixed for hearing on July 17, 2026. He points out that, an application under Order VII Rule 11 is pending.
6. We are considering an order, which refused interim protection in the present suit.
7. In the suit, the plaintiff claims that, there subsists an agreement for sale in respect of an immovable property. Plaintiff also claims that, there is a suit for specific performance of such agreement which is pending. Plaintiff claims out of the agreed consideration, plaintiff paid a sum in excess of Rs.4 crores. Balance of the price, as noted above, the appellant seeks time till July 3, 2026 to pay.
8. Challenge in the present suit is with regard to the consent decree.
9. Learned Single Judge refused to grant interim protection on the basis of the earlier proceeding and conduct of the parties with regard to the earlier proceeding. Learned Single Judge invited affidavits with regard to the present injunction petition.
10. We are informed that, there is a demurer petition filed by some of the parties which is also pending before the learned Single Judge. Learned Single Judge is yet to take a final decision on the injunction petition.

11. While refusing to grant interim protection, learned Single Judge noted that, that an oral agreement was pleaded by the appellant. Learned Single Judge also noted that, there was no documentary evidence corroborating the oral agreement or portion thereof. Learned Single Judge noted that, there was no documentary evidence produced evidencing payment of consideration amount or the part consideration as claimed by the appellant. In such circumstances, learned Single Judge returned a finding that the appellant could not satisfy the Court as regards threshold interest in the immovable property concerned.
12. Appellant before us filed an application under Order XXXXI Rule 27 of the Code of Civil Procedure, 1908. Appellant claims that the documents of payment of consideration are part of such application.
13. We need not enter into such arena of payment of consideration at this stage. Injunction petition as noted above is yet to be finally decided. On the basis of the materials made available to the learned Trial Judge, on the date when the impugned order was passed, we are not in a position to arrive at a finding that, the learned Trial Judge erred in applying the parameters for considering the grant of injunction at an ad interim stage. The documents now sought to be produced were not before the learned Single Judge. Therefore, the findings recorded in the impugned decision cannot be faulted at this stage.

14. We clarify that, we did not pronounce on the merits of the respective cases of the parties. Our observations made herein are limited for the purpose of consideration whether or not refusal to pass ad interim order as done by the learned Single Judge was correct.
15. All points raised by the parties are kept open to be agitated before the learned Trial Judge.
16. APO/24/2026 along with pending connected applications are disposed of, without any order as to costs.

(DEBANGSU BASAK, J.)

17. I agree.

(MD. SHABBAR RASHIDI, J.)