In the High Court at Calcutta
Civil Appellate Jurisdiction
Appellate Side

The Hon'ble Justice Sabyasachi Bhattacharyya
And
The Hon'ble Justice Uday Kumar

F.M.A. No.555 of 2025
with
CAN 1 of 2025

Abdur Rouf
Vs.
Lakshmi Asset and Land LLP and Others

For the appellant	:	Mr. Haradhan Banerjee, Sr. Adv. Mr. Ramdulal Manna, Ms. Manju Manna (Dey), Mr. Sayan Mukherjee
For the respondent no.1	:	Mr. Surajit Nath Mitra, Sr. Adv. Mr. Partha Pratim Roy, Mr. Saunak Sengupta, Mr. Soumyadeb Sinha, Ms. Suranjana Chatterjee
Heard on	:	09.06.2025 & 10.06.2025
Hearing concluded on	:	10.06.2025
Judgment on	:	16.06.2025

Sabyasachi Bhattacharyya, J.:-

1. The first defendant in a declaratory suit has preferred the present appeal against an order whereby two successive injunction applications filed by the plaintiffs/respondent no.1, respectively dated October 8, 2024 and February 4, 2025, were disposed of, thereby granting temporary injunction restraining the defendant no.1/appellant from

creating any third party interest and from changing the nature and character of the suit property till the disposal of the suit.

2. Learned senior counsel appearing for the appellant submits that the primary reliefs sought in the suit is declaration that a registered deed of conveyance dated March 16, 2012 executed in favour of one MPS Greenery Developers Limited (respondent no.2), the predecessor-in-interest of the defendant no.1/appellant, is a second sale of the scheduled property and therefore a void document and the same is not binding on the plaintiff as well as declaration that a sale certificate dated September 20, 2023 is also consequentially void and not binding upon the plaintiff. Since no relief has been sought for cancellation of the said deeds but the relief has been couched in declaratory form, the suit is governed by Article 58 of the Limitation Act and thus, the starting point of limitation is when the right to sue first accrued. Learned senior counsel for the appellant places reliance on Section 3 of the Transfer of Property Act, 1882, in terms of which a person acquiring a property is deemed to have notice of an instrument from the date of registration of the said instrument. Hence, it is argued that the limitation period for challenging the 2012 deed started from the year 2012 whereas the suit has been filed 12 years thereafter in 2024 and, as such, is palpably time-barred.

3. Learned senior counsel also places reliance on Section 3 of the Limitation Act, which mandates the court to dismiss a suit if barred by limitation, although limitation has not been set up as a defence. Learned senior counsel cites *Dahiben v. Arvindbhai Kalyanji Bhanusali*

(Gajra) (D) Thr LRs and Ors., reported at *(2020) 7 SCC 366*, where the Supreme Court considered the difference between Articles 58 and 59 of the Limitation Act and held that in case of the former, the limitation begins from when the right to sue "first" accrues, as opposed to the latter, where the knowledge of the facts entitling the plaintiff to have the instrument cancelled is the starting point.

4. Learned senior counsel appearing for the appellant next cites *Shakti Bhog Food Industries Ltd. v. Central Bank of India and another*, reported at *(2020) 17 SCC 260*, where the Supreme Court examined the distinctions between the Articles 58 and 113 of the Limitation Act. It was held that Article 113 stipulates that in case of successive arising of causes of action, the date when the right to sue accrues on any of such instances would be the starting point of limitation, as opposed to Article 58, where the first accrual of the right to sue is the starting point.

5. Learned senior counsel further cites *Asma Lateef and Another v. Shabbir Ahmad and Others*, reported at *(2024) 4 SCC 696*, for the proposition that it is the duty of the court, before granting any interim relief, to record its *prima facie* satisfaction on the question of maintainability.

6. Learned senior counsel also places reliance on an unreported judgment of a learned Single Judge of this Court in *C.O. No. 622 of 2018 [GPT Healthcare Pvt. Ltd. v. Soorajmull Nagarmull & Ors.]*, where the court held that when a deed is executed by an alleged stranger to the property affecting the title of the actual owner, the right to sue of the

real owner accrues immediately and the starting point of limitation has to be fixed on the date of registration of the transfer deed.

7. Learned senior counsel for the appellant further argues that the conduct of the plaintiff/respondent no.1 in suppressing material facts to obtain the injunction order disentitled the plaintiff to have the favour of such order.

8. It is submitted that it is open to the appellant to argue such suppression of material facts even before the appellate court for the first time. It is contended that the certificate of delivery of possession of the suit property in favour of the appellant by virtue of a court sale, preceded by a sale certificate being issued, was suppressed by the respondent no.1 while obtaining the injunction order before the court below. By relying on Page 84 of the stay application filed in connection with the present appeal, which is a photocopy of the said certificate of delivery of possession, it is argued that the said document was disclosed in connection with a Ponzi Scheme matter before a Co-ordinate Bench of this Court which ultimately directed the sale of the property under the aegis of a one-man committee. Despite having knowledge of the same and having unsuccessfully filed a review application in respect of the order of the said Division Bench, the plaintiff/respondent no.1 suppressed such facts before the Trial Court. It is submitted that to obtain the equitable relief of injunction, one as to come with clean hands, which was absent in the present case. Learned senior counsel cites *Mandali Ranganna and Others v. T. Ramachandra and others*, reported at *(2008) 11 SCC 1* for the proposition that the

conduct of the parties must be taken into consideration while granting injunction apart from the basic elements such as existence of *prima facie* case, balance of convenience and irreparable injury, etc. A person, who had kept quiet for a long time and allowed another to deal with the properties exclusively, ordinarily would not be entitled to an order of injunction.

9. Learned senior counsel next cites *Nair Service Society v. K.C. Alexander*, reported at *AIR 1968 SC 1165*, where the Supreme Court re-affirmed the principle that a person in possession of land in the assumed character of owner and exercising peaceably the ordinary rights of ownership has a perfectly good title against all the world but the rightful owner. If the rightful owner does not come forward and assert his title by the process of law within the period prescribed by the provisions of the statute of limitation applicable to the case, his right is forever extinguished and the possessory owner acquires an absolute title.

10. It is next contended by the appellant that the vendors of the plaintiff did not challenge the 2012 deed at any point of time and as such, the plaintiff, who stepped into the shoes of the said vendors, is precluded from challenging the same.

11. Learned senior counsel appearing for the appellant next argues that insofar as the second injunction application of the plaintiff, which was also disposed of by the impugned order, is concerned, no opportunity of filing written objection was given to the defendant no.1/appellant with

regard to the same. Thus, the order is bad for violation of the established principle of natural justice, *Audi Alteram Partem*.

12. Lastly, it is submitted that with regard to the second injunction application, the requirements of Order XXXIX Rules 3(a) and 3(b) of the Code of Civil Procedure were not satisfied, which will be evident from the orders passed in the suit.

13. Thus, it is argued that the impugned order of injunction ought to be set aside.

14. Learned senior counsel appearing on behalf of the plaintiff/respondent no.1 argues that in prayers (f) and (g) of the plaint, delivery up and cancellation of the impugned deed of 2012 and sale certificate of 2023 was also claimed, thus, bringing the suit within the fold of Article 59, as opposed to Article 58, of the Limitation Act.

15. It is submitted that even in *Asma Lateef*'s case *(supra)*, the Supreme Court observed that if the point of maintainability and bar of law is raised at the time of grant of interim relief, the court is duty-bound to record its satisfaction in respect of the maintainability of the suit. In the present case, the defendant no.1/appellant neither filed any written objection nor raised the question of maintainability and/or limitation at any point of time in the Trial Court.

16. It is argued that the general notice contemplated under Section 3 of the Transfer of Property Act cannot be construed to give rise to a cause of action within the contemplation of Article 58 of the Limitation Act. It is impractical to impute knowledge of registration, which happens within the confines of the registration office, to the world at large, at the

juncture when such registration takes place. The right of the plaintiff to challenge the impugned deeds first accrued, as per the plaint case, when attempts to develop the property were undertaken and the auction sale notice and subsequent sale certificate first came to the knowledge of the plaintiff. Thus, the suit has been filed well within the statutory limitation period and is accordingly maintainable.

17. It is further pointed out that even in the auction notice annexed to the plaint, the property was to be sold on 'as is where is' basis and the principle of 'caveat emptor' was stressed, thus, casting the burden on the defendant no.1/purchaser to ascertain the actual title in respect of the suit property. Having purchased the property despite the same, the defendant no.1/appellant is subject to the prior rights and title of the vendor of the plaintiff as well as the plaintiff. The appellant, thus, cannot take advantage of his own negligence and lack of diligence in failing to carry out proper search before purchasing the suit property.

18. Regarding possession, it is submitted that the consistent plaint case has been that the plaintiff and its predecessors-in-title have been in possession of the suit property all along.

19. Documents of grant of permission issued by the local Panchayat to the predecessors of the plaintiff and subsequently the plaintiff to build boundary wall around the suit property have been annexed to the plaint. Further, a field enquiry report in respect of a proceeding initiated by the defendant no.1/appellant under Section 144 of the Code of Criminal Procedure, also annexed to the plaint, goes on to show that the defendant no.1 was never in possession of the suit property.

Thus, there is no question of suppression of any material fact before the Trial Court.

20. The purported certificate of delivery of possession annexed at Page 84 of the stay application was not disclosed by the defendant no.1 in the court below, despite having ample opportunity to do so. In any event, the same does not show convincingly that actual physical possession was handed over to the defendant no.1/appellant at any point of time.

21. Learned senior counsel for the plaintiff/respondent no.1 further argues that there is nothing on record to show that MPS Greenery, the predecessor-in-interest of the defendant no.1/appellant, ever obtained possession of the property. Thus, there was no occasion for the vendors of the plaintiff or the plaintiff, before coming to know of the court sale, to challenge the 2012 deed or the sale certificate of 2023.

22. It is submitted that the defendant no.1/appellant lost his right to file a written objection to the first injunction application since he failed the timeline stipulated for so filing by a co-ordinate Bench of this Court in an appeal against the ad interim refusal of injunction. The High Court granted injunction in the said appeal.

23. The prayers made in the second injunction application already found place in the first injunction application. The second injunction application was, in fact, prompted due to further cause of action having arisen. Hence, there could not arise any occasion to grant further opportunity to the defendant to file written objection thereto. The injunction application was initially fixed on February 26, 2025, which was declared as a holiday subsequently in the Trial Court, due to which

a put-up petition had to be filed on February 27, 2025 for fixation of a date for hearing of the injunction application. It is submitted that the defendant no.1, who was all along participating in the suit, ought to have been more diligent in filing his written objection.

24. Thus, it is argued that no illegality was perpetrated by the learned Trial Judge in passing the impugned order of temporary injunction.

25. Having heard learned counsel for the parties, we find that the following issues have arisen for consideration in the present case:

(i) Whether the suit is barred by limitation, vitiating the maintainability of the same;

(ii) Whether the plaintiff/respondent no.1 suppressed material facts, thus, disentitling it to injunction;

(iii) Whether the plaintiff/respondent no.1 is entitled to challenge the deed of 2012 since its vendors had not challenged the same;

(iv) Whether the impugned order is vitiated by violation of the principle of *Audi Alteram Partem*.

(i) <u>Whether the suit is barred by limitation, vitiating the maintainability of the same</u>

26. The first germane question which arises for consideration is whether the learned Trial Judge ought to have refused injunction in view of the suit not being maintainable, being barred by limitation.

27. The appellant has argued that the suit is covered by Article 58 of the Limitation Act whereas the plaintiff/respondent no.1 insists that Article 59 is the relevant provision governing the suit.

28. There cannot be any manner of doubt that the principal reliefs sought in the suit are the dual challenge to the registered deed of 2012 in favour of MPS Greenery, the predecessor-in-interest of the defendant no.1/appellant, and to the registered sale certificate dated September 20, 2023 executed in favour of the defendant no. 1/ appellant. Relief (c) and Relief (d) of the plaint respectively seek declaration regarding the 2012 Deed and the 2023 Sale Certificate to the effect that such documents are void documents and not binding on the plaintiff in any manner. However, the reliefs sought in the plaint directly in respect of the said documents do not stop there. In logical extension of relief (c), relief (f) of the plaint seeks delivery up and cancellation of the 2012 Deed. Similarly, the prayer (g) is a logical continuation of prayer (d), seeking delivery up and cancellation of the Sale Certificate of 2023.

29. Article 58 of the Limitation Act can only be invoked as a residuary provision, if the suit is for any declaration other than those provided for in Part-III of the Schedule to the Limitation Act, which deals with suits relating to declarations.

30. However, Article 59 specifically deals with suits *inter alia* to cancel or set aside an instrument. Prayers (c) and (f) on the one hand and Prayers (d) and (g) on the other, read in conjunction, leave no manner of doubt that the suit is primarily one for cancellation of the deed of

2012 and the sale certificate of 2023. Thus, it is Article 59 of the Limitation Act, as opposed to Article 58, which is applicable.

31. Article 59 stipulates the starting point of limitation to be when the facts entitling the plaintiff to have the instrument cancelled or set aside first become known to him. The plaint case in that regard can be culled out in particular from paragraphs 6, 7 and 30 of the plaint. As per the said provisions, the plaintiff sought to exploit the suit property commercially in November, 2023 and intended to enter into a development agreement. The developer, while conducting searches, unearthed the sale certificate dated September 20, 2023, upon which appropriate enquiries were made and the plaintiff learnt about the purported sale in favour of the defendant no.1/appellant. The sale certificate itself discloses the 2012 Deed, and as such, as per the plaint case, the cause of action arose first on November 18, 2023 and the suit was filed duly within the limitation period on October 7, 2024.

32. Even if we were to proceed on the premise that Article 58 is applicable, the said provision, being residuary in nature, applies to all suits for declaration of any other nature than those provided for in Part-III of the Schedule to the Limitation Act. Hence, by its very nature, it partakes the character and derives colour from the nature of the declaration sought. If the suit challenges a deed, such a challenge can only be within the contemplation of Section 31 of the Specific Relief Act, 1963 (for short, "the 1963 Act"). Section 31(1) of the 1963 Act provides that any person against whom a written instrument is void or voidable, and who has reasonable apprehension that such instrument, if left

outstanding, my cause him serious injury, may sue to have it adjudged void or voidable; and the court may, in its discretion, so adjudge it and order it to be delivered up and cancelled.

33. Thus, even if a suit is filed to have a written instrument adjudged void or voidable, the court, if it chooses to so adjudge, has necessarily to order it to be delivered up and cancelled. In fact, Chapter-V of the 1963 Act, under which Section 31 is arrayed, itself is captioned "Cancellation of Instruments".

34. Thus, conspicuously, even if a suit is filed under Section 31 of the 1963 Act for adjudication of a written instrument to be void or voidable, the relief granted in the said suit would be delivery up and cancellation of the deeds. Read in such context, even if a prayer is made in the plaint simpliciter for adjudication that a deed is void or voidable, the suit is necessarily one for cancellation or setting aside such instrument, since that is the relief which the court can grant under Section 31 if it allows the declaration sought by the plaintiff and adjudicates the deed to be void or voidable. Thus, even a suit for declaration of a deed to be void or voidable ultimately partakes the character of a suit for cancellation or setting aside of such instrument and comes within the ambit of Article 59 of the Limitation Act. Thus, Article 58 cannot be attracted in any event and even if it was, the starting point of limitation would be when the right to sue first accrues, which would borrow its hue from Article 59 and it has to be deemed that such first accrual would be on the date when the facts entitling the plaintiff to have the instrument cancelled first becomes known to him.

35. The reliance of the appellant on *GPT Healthcare Pvt. Ltd. (supra)* is misplaced. Apart from the fact that the same was rendered by one of us (namely, Bhattacharyya,J.) sitting singly and not being binding *per se* on a Division Bench, the said judgment has also to be read in proper context. In the said case, there are recurring findings of the court that the plaintiff was aware of the possession of the defendant. Read in such context, coupled with the fact that the challenged deed was registered, it was held that the right to sue accrued on the date of registration.

36. As opposed thereto, in the present case, Article 59 is attracted and the entitlement of the plaintiff to have the instrument cancelled has to be read in the context of the first infringement of the legal rights of the plaintiff.

37. The Supreme Court, in *Dahiben (supra),* held that the right to sue accrues only when the cause of action arises and the suit must be instituted when the right asserted in the suit is infringed, or when there is a clear and unequivocal threat to infringe such right by the defendant.

38. In the present case, the legal right, title and interest of the plaintiff was infringed only by virtue of the execution of the sale certificate in favour of the defendant no.1/appellant and the knowledge of the plaintiff of such infringement, which substantially constituted such infringement itself, regarding the 2012 deed also accrued in the year 2023 from the sale certificate and the connected proceedings. Thus, even in terms of the ratio laid down in *Dahiben (supra)*, the present suit is not *ex facie* barred by limitation.

39. *Shakti Bhog Food Industries Ltd.*'s case is not germane in the present context, since there the Supreme Court was distinguishing between the provisions of Articles 58 and 113 of the Limitation Act, both of which were in the nature of residuary provisions, since none of the said provisions is applicable to the present case.

40. Insofar as *Asma Lateef's (supra)* case is concerned, the Supreme Court held in the said case that where interim relief is claimed, the court has to record its satisfaction on the question of maintainability when the other party to the suit raises a point of maintainability or the objection that the suit is barred by law. In the present case, despite getting ample opportunity, the defendant no.1 failed to raise any such objection.

41. The reliance of the appellant on Section 3 of the Limitation Act is also misconceived, since the suit is not *ex facie* barred by limitation as per the averments of the plaint and the injunction application. Limitation, at best, can be a mixed question of fact and law in the present case, which is to be decided at the stage of trial of the suit. It is well-settled that at the injunction stage, the court shall not conduct a mini-trial and the concept of "triable issue" and "prima facie case" cannot be confused with an adjudication on title. The plaintiff claims possession all along, by itself and through its predecessors-in-interest, and pleads knowledge of the infringement of such right and title only in the year 2023 and as such, there was no occasion for the learned Trial Judge to hold at the injunction stage that the suit is not maintainable, being barred by limitation.

42. Insofar as Section 3 of the Transfer of Property Act is concerned, the Section commences with the words "in this Act, unless there is something repugnant in the subject or context...". The Section then proceeds to stipulate that a person is said to have notice of a fact when he actually knows the fact or but for wilful abstention from an enquiry or search which he ought to have made, or gross negligence, he would have known it. None of the said yardsticks are applicable in the present case.

43. Explanation I of the said provision stipulates the notice of a registered instrument from the date of registration. However, as observed earlier, the said notice operates only within the four corners of the Transfer of Property Act and cannot be superimposed on any other statute, including the Limitation Act. Since Section 3 comprises of the interpretation clause in the context of the Transfer of Property Act itself, unless repugnant to the context, the concept of 'notice' under the said Act cannot be confused with the commencement of 'knowledge' as contemplated in the Limitation Act.

44. In fact, several Sections of the Transfer of Property Act itself, such as Sections 39 and 40, speak about 'notice' and, as such, the interpretation of notice under Section 3 of the said Act has to be applied in such context alone and cannot be transposed to a different statute. Hence, the argument that "notice" under Section 3 of the Transfer of Property Act is equivalent to "knowledge" for the purpose of starting point of limitation under the Limitation Act is entirely misconceived.

45. The reliance of the appellant on *Mandali Ranganna (supra)* is also rather misplaced since, unlike the facts of the said case, the plaintiff/respondent no. 1 herein instituted the suit and moved the injunction application soon after learning of the Sale Certificate of 2023 and, therefrom, about the 2012 deed. So, there arose no question of the plaintiff sitting tight over the infringement of its right and permitting such infraction of its right to continue without taking any steps.

46. Accordingly, this issue is held in the negative and it cannot be said that the suit is barred by limitation or non-maintainable on such count.

(ii) Whether the plaintiff/respondent no.1 suppressed material facts, thus, disentitling it to injunction

47. A question arises as to whether the non-disclosure of the 'certificate of delivery of possession' annexed at Page 84 of the stay application filed by the appellant in the present appeal in the Trial Court tantamounted to suppression of a material fact.

48. While deciding such issue, we cannot lose sight of the fact that no injunction was granted by the learned Trial Judge in respect of possession of the suit property, nor was such prayer made in the second injunction application filed by the plaintiff/respondent no.1 in the Trial Court. Thus, possession was not a determinant in the impugned order.

49. Moreover, the plaintiff has all along asserted its possession in respect of the suit property and denies that the defendant is in occupation thereof. The plaintiff, with its plaint and injunction application, annexed documents to evidence *prima facie* that permission was granted to the predecessor-in-interest of the plaintiff as well as to the plaintiff to construct boundary wall around the suit property. Moreover, a document in the nature of an enquiry report, filed in connection with a proceeding under Section 144 of the Criminal Procedure Code initiated by the defendant no.1/appellant, showing that the appellant is not in possession of the property, was also produced by the plaintiff/respondent no. 1 in the trial Court.

50. In such context, it is arguable as to whether the certificate of delivery of possession assumes much importance, since it is debatable as to whether the same indicates notional/symbolic possession or actual physical possession being handed over to the appellant. In fact, the said document does not specifically contain anything to indicate as to whether actual physical possession was handed over; if so, how it was handed over, who were present at the spot, whether there were any witnesses and if so, what were their antecedents, and also from whom the possession was purportedly taken.

51. That apart, the defendant no.1/appellant failed to avail of the opportunity to file written objection as granted by the co-ordinate Bench in appeal against the previous refusal of ad interim injunction, by virtue of which it could very well have produced the said document.

52. In such context, we do not find that non-disclosure of the said document by the plaintiff, particularly since the defendant no.1 took no initiative to do so, vitiates the impugned order for suppression of a fact so material as to possibly alter the adjudication in the Trial Court.

(iii) Whether the plaintiff/respondent no.1 is entitled to challenge the deed of 2012 since its vendors did not challenge the same

53. Neither the plaintiff nor its vendors had any occasion to challenge the deed of 2012, since no rights were asserted at any point of time by MPS Greenery on the basis of such deed at any point of time. There is nothing on record to indicate that the legal right enuring in favour of the plaintiff and its predecessors by virtue of the transfers in their favour, which could be traced back to the year 1964, was ever infringed and/or the deed of 2012 was every disclosed or acted upon.

54. As per our above discussion, the concept of "a person having notice" under Section 3 of the Transfer of Property Act is not germane for adjudication of the starting point of limitation insofar as the declarations sought in the present suit are concerned. In any event, even if the 2012 deed was not challenged within three years from its registration, fact remains that *prima facie*, no title passed in favour of MPS Greenery and, through it, to the appellant in view of prior sale by the predecessors-in-interest of the vendors of MPS Greenery which

ultimately culminated in transfer in favour of the plaintiff. Hence, even if we proceed on the premise that due execution and registration of the 2012 deed happened, the same is not sacrosanct for the purpose of adjudicating the title of the plaintiff as no title passed through it, particularly read in the context of the prior deeds in favour of the plaintiff and its predecessors-in-interest.

55. Another aspect cannot be overlooked here, being that the auction notice by dint of which the defendant no.1/appellant purchased the property clearly gave out disclaimers to the effect that the rule of 'caveat emptor' applied and that the purchase would be on "as is where is basis", thereby casting liability entirely on the purchaser to ascertain whether proper title would be derived by it through such purchase. Thus, the auction notice did not make any pretentions to transfer unencumbered and valid title as such. Hence, even without a challenge to the 2012 deed, it was the incumbent duty of the auction purchaser to ascertain by proper search as to the antecedent title in respect of the suit property. As such, the fact that the vendors of the plaintiff did not challenge the 2012 deed is not germane in the present context, as there arose no occasion for the said vendors to challenge the same at any given point of time. In the plaint and the injunction application, it is clearly disclosed that the cause of action for challenging the said deed was revealed to the plaintiff only upon the plaintiff coming across the sale certificate in the year 2023 for the first time.

56. The appellant relies on *Nair Service Society (supra)*, where the Supreme Court held that if a person exercises possession in respect of a property

peaceably, he acquires title against the whole world but against the true owner. If the true owner does not assert title within the limitation period, his right is forever extinguished.

57. However, the ratio of the said report is not apt in the facts of the instant case. There is precious nothing on record to show even *prima facie* that MPS Greenery asserted its ownership or ever was in possession of the suit property pursuant to the purported sale deed of 2012 which, in any event, did not confer any title on MPS Greenery in view of its vendors themselves having no title. Thus, the plaintiff/respondent no. 1 and its predecessors, being the true owners as per their chain deeds, never had any occasion or cause of action to challenge the deed of 2012 before it came to the fore in 2023.

58. Hence, the plaintiff is very much entitled to challenge the 2012 deed upon first coming to know of it in the year 2023, irrespective of its predecessors-in-title having not done so.

(iv) ***Whether the impugned order is vitiated by violation of the principle of Audi Alteram Partem***

59. A co-ordinate Bench of this Court, in the appeal preferred against the refusal of ad interim injunction at the initial stage, clearly stipulated the time-limit for filing written objection to the first injunction application. The defendant no.1/appellant, having failed to file such objection within the said time, lost its opportunity to do so. Thus, it is

an incorrect submission that no opportunity was given to the appellant to contest the first injunction application by filing a written objection thereto.

60. The second injunction application was merely prompted by further cause of action and can be read as a supplementary pleading to the first injunction application, more so since the prayers contained in the second injunction application were already made in the first such application and were subsumed by the prayers made in the first injunction application.

61. In fact, in the second injunction application, the prayers of the first were curtailed insofar as the possession of the plaintiff is concerned.

62. Thus, it is immaterial as to whether any further opportunity could be given to the appellant to file written objection to the second injunction application. Rather, having lost its opportunity to deal with the self-same facts as pleaded the first injunction application, such right of filing of written objection could not be reopened in the garb of granting such opportunity in respect of the second injunction application.

63. The contents of the first and the second injunction application were substantially the same insofar as the germane facts are concerned. Hence, even without the second injunction application, the prayers of the first injunction application would cover that of the second and the learned Trial Judge acted well within her jurisdiction in granting the same.

64. Thus, this issue is also decided against the appellant.

CONCLUSION

65. In view of the above discussions, we find that there was no infirmity or illegality committed by the learned Trial Judge in passing the impugned order of injunction and all the relevant factors were adverted to duly in the impugned order. As such, there is no scope of interference with the impugned order.

66. Accordingly, F.M.A. No.555 of 2025 is dismissed on contest against the plaintiff/respondent no.1, thereby affirming the impugned order dated March 1, 2025 passed by the learned Civil Judge (Senior Division), Seventh Court at Alipore, District – South 24 Parganas in Title Suit No.1424 of 2024.

67. Consequentially, CAN 1 of 2025 is disposed of as well.

68. There will be no order as to costs.

(Sabyasachi Bhattacharyya, J.)

I agree.

(Uday Kumar, J.)