Form No. J(2)

In the High Court at Calcutta
Civil Appellate Jurisdiction
Appellate Side

Present: The Hon'ble Justice Sabyasachi Bhattacharyya
And
The Hon'ble Justice Sandip Kumar De

FMA No. 593 of 2026
+
CAN 1 of 2026

Smt. Keya Kundu
Vs.
Mr. Parag Mukherje and others

For the appellant : Mr. Gouranga Kumar Das,
Mr. Bishal Maity, Advs.

For the plaintiff/
respondent no. 1 : Mr. Arnab Mukherjee,
Mrs. Madhurima Mukherjee,
Mr. Aniket Bhowmich, Advs.

Heard on : 28.09.2026.

Judgment on : 28.09.2026.

Sabyasachi Bhattacharyya, J.:-

1. The present appeal has been preferred against an order whereby the learned Trial Judge granted injunction restraining the defendant nos. 1 and 2, their men and agents from alienating, transferring and/or creating any sort of third party interest with respect to the suit property in any manner till the disposal of the suit.

2. The second defendant in the suit, being the sister of the first defendant, is the appellant before this Court; whereas the first

defendant has been arrayed in the appeal as proforma respondent no.2.

3. The impugned order was passed in a suit for specific performance of an agreement for sale allegedly entered into between the parties in respect of an immoveable property.

4. Learned counsel appearing for the defendant no.2 / appellant argues that at no point of time was any agreement entered into between the plaintiff / respondent no.1 and the present appellant.

5. All the emails and other documents produced by the plaintiff / respondent no.1 along with the plaint and the injunction application were between the plaintiff / respondent no.1 and the proforma respondent no. 2, that is, the brother of the appellant and/or the husband of the appellant.

6. It is submitted that no power of attorney was ever executed by the appellant either in favour of her husband and/or her brother and, as such, they did not have any authority to enter into the purported agreement on behalf of the appellant, thus vitiating the said purported agreement.

7. Secondly, learned counsel for the appellant argues that in view of the ingredients mentioned in Section 65B of the Indian Evidence Act, 1872, as amended, having not been complied with, the learned Trial Judge acted beyond jurisdiction in looking into the purported printouts of the emails / WhatsApp messages, which are in the nature of electronic evidence.

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8. Thirdly, learned counsel argues that in the absence of any earnest money or consideration having been paid, there was no concluded contract between the parties at any point of time.

9. Lastly, learned counsel places reliance on Section 10 of the Indian Contract Act, 1872 and argues that no written agreement having been entered into the parties, the suit for specific performance of agreement does not stand on its own strength.

10. In support of his contentions, learned counsel for the appellant cites *Anvar P.V. Vs. P. K. Basheer and others* reported at *(2014) 11 S.C.R. 399: (2014) 10 SCC 473*.

11. On the strength of the said judgment, it is argued that the Hon'ble Supreme Court approved the view that unless the provisions of Section 65B are complied with and a certificate is produced in terms thereof, no electronic evidence can be looked into by the Court.

12. Learned counsel next relies on *Ambalal Sarabhai Enterprise Limited Vs. Ks Infraspace Llp Limited* reported at *AIR 2020 SC 307* for the proposition that specific performance itself being a discretionary remedy, a plaintiff seeking temporary injunction in such a suit will have to establish a strong *prima facie* case on the basis of undisputed facts to obtain an injunction. The conduct of the plaintiff, it was held, will also be a very relevant consideration for the purposes of injunction. The discretion at this stage, as held in the said judgment, has to be exercised judiciously and not arbitrarily.

13. It is argued that, applying the aforesaid tests, the learned Trial Judge erred in law and in fact in granting injunction.

14. While contradicting the arguments of the appellant, learned counsel for the plaintiff / respondent no.1 submits that from the series of communications between the parties, by way of Whatsapp messages / emails, it would be evident that there was consensus *ad idem* between the parties.

15. From the materials placed before the learned Trial Judge, which have also been annexed to the supplementary affidavit filed before this Court, it would be evident that there was an offer, coupled with a draft deed being forwarded on behalf of the defendants to the plaintiff, which offer was accepted by the plaintiff, thereby conclusively entering into a contract between the parties.

16. Learned counsel submits that it would be premature to argue at this stage, while deciding an injunction application, that the parameters of Section 65B of the Evidence Act had to be complied with.

17. Learned counsel further submits that earnest money, as per the plaint case, was partially paid by the plaintiff.

18. Even otherwise, learned counsel submits on instruction that the plaintiff / respondent no.1 is agreeable to deposit the earnest money / advance of Rs.6,00,000/-, as agreed in the emails between the parties, in court, if so directed.

19. Learned counsel argues that in the context of the present case, a concluded contract has been conclusively made out to exist, at least at the level of *prima facie* case, thus giving rise to a triable issue, entitling the plaintiff to injunction.

20. Learned counsel places reliance on a coordinate Bench judgment of this Court in the case of *Amit Mondal since deceased by his legal heirs and representatives Vs. Pannalal Das and others* reported at *2017 SCC OnLine Cal 8739* for the proposition that there are various modes of creation of contract. A contract, it was held therein, may be concluded orally, by exchange of letters or by signing a document by the parties to the contract and exchange thereof between them.

21. The Division Bench observed that once the vendor executes a contract containing the terms and conditions on which he agreed to transfer his property to the purchaser and the purchaser, acting upon the said agreement, pays the earnest money to the vendor for purchasing the suit property, such payment of earnest money to the vendor and acceptance thereof by the vendor amounts to conclusion of the contract between the parties.

22. Learned counsel next cites *Ram Krishan Singhal Vs. Executive Engineer and others* reported at *(1990) SCC Online Del 310*, where a learned Single Judge of the Delhi High Court observed, *inter alia,* that a formal contract is a mere formality and merely because the same was not executed, it would not mean that a final and a binding contract had not come into existence between the parties by exchange of letters, as in the said case. The contract, it was observed, had come into existence between the parties by exchange of letters.

23. Heard learned counsel for the parties.

24. Insofar as the argument advanced by the appellant on Section 65B of the Indian Evidence Act, 1872 is concerned, *Anvar P.V.* (supra) does

not come to the aid of the appellant. In the said judgment, the Hon'ble Supreme Court was considering a scenario where an election petition, having the trappings of a suit, had been finally adjudicated. During trial, several documents were tendered in evidence and marked as exhibits. In such context, it was held that non-compliance of Section 65B of the Indian Evidence Act, 1872 was fatal to the admissibility of such evidence.

25. As opposed thereto, in the present case, the matter has only reached the preliminary stage of consideration of an application for injunction. Section 65B of the Evidence Act is only attracted as and when a document is tendered in evidence and at the stage of marking the same as an exhibit. It would be premature to apply such principle at the stage of adjudicating an injunction application since, if so applied, an injunction application hearing would be converted to a full-fledged trial involving adduction of evidence, which is not contemplated by any law.

26. At the stage of grant of injunction, the court is only to look at the respective pleadings of the parties on oath, as evidenced from the plaint and/or the written statement as well as the temporary injunction application and its written objection, along with the documents relied on therein. The court is only to ascertain whether triable issues have been raised for the matter to go for trial, and not whether the plaint case has been proved to the hilt.

27. Thus, alleged non-compliance of Section 65B is not a relevant consideration at the stage of grant of temporary injunction.

28. The argument as to no earnest money having been paid does not hold water as well. The payment of earnest money only follows a contract being concluded between the parties. In a suit for specific performance, the primary consideration of the court is whether a concluded contract exists between the parties. The payment of earnest money only follows thereafter.

29. In the facts of the present case, as evidenced by the documents furnished by the plaintiff in the Trial Court, we find that immediately after consensus *ad idem* was reached, by an email dated September 7, 2023, sent at 3.52 p.m, the proforma respondent no. 2, that is the brother of the appellant, one of the co-owners with the appellant, expressed disagreement to honour the same. Thus, the stage of payment of earnest money did not fructify in the present case, although the contract had already got a final shape.

30. Secondly, the readiness and willingness of the plaintiff in the present case is sufficiently evidenced by the plaintiff/respondent no. 1 having submitted before us that he is agreeable to put in the earnest money/advance of Rs. 6,00,000/-, as borne out by the emails to be the advance contemplated between the parties.

31. Under the amended Specific Relief Act, 1963, the readiness and willingness is not even required to be pleaded, although it is required to be proved, which shall come only at the stage of trial. However, by dint of having offered to put in the agreed advance amount, sufficient readiness and willingness has been exhibited by the plaintiff/respondent no. 1. Thus, the non-payment of earnest

money/consideration would be an irrelevant factor in the facts of the present case.

32. Learned counsel for the appellant also relies on Section 10 of the Indian Contract Act to bolster his argument that no written agreement has been entered into between the parties. However, it is unknown to Indian law that in order to be a concluded agreement, such agreement has necessarily to be in writing. Section 10 merely mandates that all agreements are contracts if they are made by free consent of parties competent to contract, for a lawful consideration and with a lawful object and are not expressly declared to be void.

33. The proviso thereto stipulates that nothing therein contained shall affect any law in force in India by which any contract is required to be made in writing or in the presence of witnesses or any law relating to the registration of documents.

34. In the present case, nothing has been produced before us to indicate that there is any law debarring an oral agreement or providing that an agreement by exchange of emails / whatsapp messages cannot be a concluded contract in law.

35. Insofar as the emails are concerned, we find sufficient *prima facie* proof of a concluded contract being borne out by the same.

36. The appellant relies on *Ambalal Sarabhai* (supra) to argue that specific performance is a discretionary remedy and that a strong *prima facie* case has to be established. In the said case, the negotiations between the parties were disbelieved to have given rise to a concluded contract by the Hon’ble Supreme Court.

37. With utmost respect, with the 2018 amendment to the Specific Relief Act, 1963, the element of discretion which was statutorily recognized to vest in courts in the grant of the relief of specific performance has been erased.

38. Although, in all cases, the court implicitly has a discretion to grant the relief based on several factors, the law, as it stands now after the 2018 amendment, does not vest any statutory discretionary power in the Court if the parties otherwise prove the necessary ingredients of a concluded contract.

39. In *Ambalal Sarabhai* (supra), the Hon'ble Supreme Court rendered the judgment in a particular context. It is well-settled that the ratio of a judgment cannot be extracted in isolation of the factual matrix of the case.

40. In paragraph no. 17 of the said judgment, the Hon'ble Supreme Court recorded that the negotiations between the parties were reflected in approximately seventeen emails exchanged between them. In the same breath, however, it was recorded that the plaintiff therein was well aware from the very inception that the defendant was negotiating for sale of the land simultaneously with two others and was further aware on March 30, 2018 itself that the deal with it had virtually fallen through, as informed to the escrow agent. It was also recorded that there was no evidence at that stage that the acceptance was communicated to the defendant before the latter entered into a deal with defendant no. 2 on March 30, 2018 and executed a registered

agreement for sale in favour of a said third party to the agreement on March 31, 2018.

41. The pleadings in the said suit, as observed in paragraph no. 18 of the report, acknowledged the awareness of the plaintiff of the then ongoing negotiations with defendant no. 2.

42. The defendant no. 2 in the said case, as recorded in paragraph no. 20 of the report, in addition to the dues of the Income Tax department, made further payment of a substantial amount to the defendants, who had also proceeded to utilize a part out of the said amount and had materially altered their position by the inaction of the plaintiff to institute the suit in time and having allowed third party rights to accrue by making substantial investments.

43. In stark contradiction therewith, in the present case, there is no ingredient of any subsequent indefeasible or valuable accrued rights having been created in favour of any third party which would prevent the Court from granting the relief of specific performance of contract.

44. On a bare perusal of the printouts of the emails produced before the Trial Court in the instant case, which are also before us, it appears that a concluded contract was entered into between the parties, at least on a prima facie footing.

45. By an email dated August 3, 2023, the plaintiff/respondent no. 1 had acknowledged the receipt of an earlier email sent by one Dipak Kundu, the husband of the present appellant.

46. In furtherance thereof, on August 23, 2023, there was a further email by proforma respondent no. 2, the co-owner of the appellant and her

brother, to the present plaintiff/respondent no. 1, indicating that based on telephonic conversation with one Raja Banerjee (apparently a broker), it was observed that the plaintiff had made his mind to purchase the building of the defendants at a price of Rs.66,00,000/-. As per the said email, consequent upon such telephonic conversation, the proforma respondent no. 2 was forwarding a draft agreement for sale for the premises for the ready reference of the plaintiff. It was also offered that upon review of the same, if the plaintiff felt that he wanted to alter any condition, to discuss telephonically the same. A photocopy of such draft deed, attached to the email, has also been produced in court.

47. Notably, a copy of the said email, as evident therefrom, was also forwarded to the husband of the appellant.

48. In fruition of such negotiations, the plaintiff/respondent no. 1 wrote a further email addressed to the proforma respondent no. 2 on September 7, 2023, referring to whatsapp calls made on August, 2023 where the recipient of the email had intimated his offer of Rs.66,00,000/- and expressed agreement to such offer on the part of the plaintiff.

49. Thus, by the email dated September 7, 2023, *prima facie* the parties came to a consensus ad idem as to the essential terms and conditions of the transfer of the property, thereby taking the shape of a concluded contract. Whereas such acceptance was conveyed at 1.25 p.m. on September 7, 2023 by the plaintiff, post facto, by an email of even date sent at around 3.52 p.m., it was sought to be conveyed by proforma

respondent no. 2 that “we” (indicating both the co-owners) had decided not to sell the property “at this time”.

50. Such post facto conveyance of disagreement cannot vitiate a contract already entered into between the parties, as evidenced by the emails referred to earlier.

51. Thus, a strong *prima facie* case has been made out insofar as there being a concluded contract between the parties is concerned.

52. The question of registration, which was also one of the considerations in *Ambalal Sarabhai* (supra), does not acquire relevance in the present case in view of the proviso to Section 49 of the Registration Act, which does not mandate any registration for a document to be accepted by the Court even in evidence as proof of a contract between the parties in a suit for specific performance of such contract.

53. Lastly, although the appellant feigns ignorance of the transaction and seeks to disassociate herself from it as well as anything to do with her husband and the proforma respondent no. 2, who is her brother, fact remains that the appellant did not shy away from filing a joint written statement as well as joint written objection with her brother, the defendant no.1 / proforma respondent no.2, in connection with the suit as well as the injunction application, which clearly bears out her complicity in the matter. If the appellant had no connection with her brother, the other co-owner, vis-à-vis the transaction, there could be no justification for her not entering appearance separately in the suit and pleading her case against her brother, who she alleges to have entered

into the contract on her behalf behind her back, collusively with her husband.

54. Moreover, the first email, which was referred to in the initial email sent by the plaintiff, was also sent by the husband of the appellant. Thereafter, copies of most of the emails concerned were forwarded to the said husband, which clearly shows that it was the husband of the appellant who was dealing in the matter on her behalf.

55. In such view of the matter, the complicity between the appellant and the proforma respondent no. 2, who are defendants in the present suit, is apparent and cannot be denied at the whims of the appellant conveniently, for the purpose of the present litigation.

56. In view of the above discussions, this Court is of the opinion that the learned Trial Judge was justified in granting injunction as a sufficient case has been made out for grant of injunction.

57. Apart from a *prima facie* case being made out by the plaintiff/respondent no.1, the balance of convenience and inconvenience is also in favour of such grant in view of the subsequent attempts of the appellant as well as the proforma respondent no. 2 to deny the very existence of the contract.

58. The appellant might suffer irreparable injury and there would be unnecessary multiplicity of proceedings unless the injunction as sought for was granted by the learned Trial Judge.

59. Hence, we do not find any merit in the appeal.

60. Accordingly, FMA No. 593 of 2026 is dismissed on contest, thereby affirming the impugned order dated January 16, 2026 passed by the

learned Civil Judge (Senior Division), Fifth Court at Alipore, District-South 24 Parganas, in Title Suit No. 1463 of 2023.

61. Consequentially, CAN 1 of 2026 is disposed of as well.

62. However, it will be open to the learned Trial Court, if it is of such opinion at any stage of the suit, to direct the plaintiff/respondent no.1 to deposit the contractually agreed advance amount of Rs. 6 lakh in the Trial Court to prove her readiness and willingness, subject to the outcome of the suit.

63. We make it abundantly clear that the aforesaid observations are tentative in nature, rendered only for the purpose of deciding the present appeal, and shall not be treated to be binding on the parties or the learned Trial Judge at any subsequent stage of the suit.

64. There will be no order as to costs.

65. Urgent certified copies of this judgment, if applied for, be made available to the parties upon compliance with the requisite formalities.

(Sabyasachi Bhattacharyya, J.)

I agree.

(Sandip Kumar De, J.)