

GAHC010216072025



2026:GAU-AS:8209

THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : FAO/62/2025

SOMNATH CHATTERJEE
S/O. LT. TARINI CHARAN CHATTARJEE, R/O. GC-77, SALT LAKE, SECTOR-II,
KOLKATA-700096, WEST BENGAL

VERSUS

B AND A LIMITED AND 2 ORS.
AN EXISTING CO. WITHIN THE MEANING OF THE COMPANIES ACT, 2013
HAVING ITS REGD. OFFICE PREVIOUSLY AT INDU BHAVAN, MAHATMA
GANDHI ROAD, JORHAT-785001, ASSAM AND PRESENTLY AT VILL.-
GARIABABI, CHIRANG, MOUZA KHANGIA, DIST. JORHAT, ASSAM, PIN-
785006.

2:SHARMILA VIJAY SHETTY
RESIDING AT B-32
TURF VIEW
SETH MOTILAL SINGHI MARG
MUMBAI-400018.

3:HDFC BANK LTD.
CARRING ON BUISNESS
INTER ALIA FROM 11
U.N. BRAHMACHAL STREET
KOLKATA-700017
WEST BENGAL

Advocate for the Petitioner : MR. W SHARMA, S SENGUPTA,MR P GOGOI,MR. A K
SAHEWALLA

Advocate for the Respondent : MR. P BORAH, MR R CHAKRAVORTY(R-3),MR. P SARMAH (R-
3),R BASUMATARY (R-3),FOR CAVEATOR,MR. S HAZARIKA,MR B KAUSHIK,K
BHARALI,MR. S HAZARIKA

Linked Case : I.A.(Civil)/4154/2025

HDFC BANK LTD
REPRESENTED BY THE BRANCH MANAGER
11
DR. U.N. BRAHMACHARI STREET
KOLKATA 700017

VERSUS

SOMNATH CHATTERJEE AND 2 ORS
S/O LT. TARINI CHARAN CHATTARJEE
R/O GC 77 SALT LAKE
SECTOR II
KOLKATA 700096

2:B AND L LIMITED
VILLAGE GARIABABI
CHIRANG
MOUZA KHANGIA
DIST JORHAT
ASSAM 785006

3:SHARMILA VIJAY SHETTY
RESIDING AT B-32
TURF VIEW SETH MOTILAL SINGHI MARG
MUMBAI
400018

Advocate for : MR. P SARMAH
Advocate for : MR. A K SAHEWALLA appearing for SOMNATH CHATTERJEE
AND 2 ORS

Linked Case : I.A.(Civil)/3216/2025

SOMNATH CHATTERJEE
S/O. LT. TARINI CHARAN CHATTARJEE
R/O. GC-77
SALT LAKE
SECTOR-II

KOLKATA-700096
WEST BENGAL

VERSUS

B AND A LIMITED AND 2 ORS.
AN EXISTING CO. WITHIN THE MEANING OF THE COMPANIES ACT
2013 HAVING ITS REGD. OFFICE PREVIOUSLY AT INDU BHAVAN
MAHATMA GANDHI ROAD
JORHAT-785001
ASSAM AND PRESENTLY AT VILL.- GARIABABI
CHIRANG
MOUZA KHANGIA
DIST. JORHAT
ASSAM
PIN-785006.

2:SHARMILA VIJAY SHETTY
RESIDING AT B-32
TURF VIEW
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3:HDFC BANK LTD.
CARRING ON BUISNESS
INTER ALIA FROM 11
U.N. BRAHMACHAL STREET
KOLKATA-700017
WEST BENGAL

Advocate for : MR. W SHARMA
Advocate for : appearing for B AND A LIMITED AND 2 ORS.

Linked Case : I.A.(Civil)/3982/2025

SOMNATH CHATTERJEE
SON OF LATE TARINI CHARAN CHATTERJEE
RESIDENT OF GC-77
SALT LAKE
SECTOR-III
KOLKATA - 700096
WEST BENGAL

VERSUS

B AND A LIMITED
AN EXISTING COMPANY WITHIN THE MEANING OF THE COMPANIES ACT
1956 AND HAVING ITS REGISTERED OFFICE AT INDU BHAVAN
MAHATMA GANDHI ROAD
JORHAT - 785001
ASSAM AND PRESENTLY AT VILL. GARIAHABI
CHARINGIA
MOUZA KHANGIA
DIST. JORHAT
ASSAM - 785006

2:SHARMILA VIJAY SHETTY
RESIDING AT B-32
TURF VIEW
SETH MOTILAL SINGHI MARG
MUMBAI-400018.

3:HDFC BANK LTD.
CARRING ON BUISNESS
INTER ALIA FROM 11
U.N. BRAHMACHAL STREET
KOLKATA-700017
WEST BENGAL

Advocate for : MR. W SHARMA
Advocate for : MR. P BORAH appearing for B AND A LIMITED

:::BEFORE:::

HON'BLE MR. JUSTICE SANJEEV KUMAR SHARMA

Date on which judgment is reserved	:30.04.2026
Date of pronouncement of judgment	:10.06.2026
Whether the pronouncement is of the Operative part of the judgment	:NA
Whether the full judgment has been Pronounced	:NA

Judgment & Order (CAV)

Heard Mr. R. Banerjee, learned Senior Counsel, Mr. D. Sharma, learned Senior Counsel for the appellant, and Mr. K.N. Choudhary, learned Senior counsel for respondent No. 1 assisted by Mr. K. Jain, learned counsel, and Mr. D. Mozumder, learned Senior Counsel assisted by Mr. B. Kaushik, learned counsel for respondent No. 2.

2. The present appeal is filed against the impugned Order dated 15.09.2025 passed in Misc. (J) Case No. 27/2012 in Title Suit No. 41/2012 by the Learned Civil Judge, Jorhat whereby the injunction application filed by the appellant under Order XXXIX Rules 1 & 2 read with Section 151 of the Code of Civil Procedure, 1908 was dismissed.

3. On or about August, 2012, the deceased original plaintiff late Hemendra Prasad Barooah had filed a civil suit before the Learned Court below being Title Suit No. 41/2012 seeking the following reliefs:-

"a. Declaration that the plaintiff is the sole and absolute owner of 861918 equity shares of the defendant no. 1 which is now lying in the Demat Account bearing No. DPID IN 301151 and client ID 26424547 in the names of the plaintiff and the defendant No.2 maintained by the defendant No.3;

- b. Decree for mandatory injunction directing the defendant No. 2 to execute / sign the delivery instructions for and submit to plaintiff for transfer of the said 861918 equity shares in the sole name of the plaintiff;*
- c. Perpetual injunction restraining the defendants from transferring the shares from the existing accounts maintained by the defendant No. 3 save to any demat account standing in the sole name of the plaintiff;*
- d. Perpetual injunction restraining the defendant No. 2 from using the delivery slips lying with the defendant No. 2 bearing number from A444026920 to 929 in any manner whatsoever;*
- e. Perpetual injunction restraining the defendants from dealing with, disposing of or in any manner encumbering the said 861918 equity shares except for the purpose of transferring the same in the name of the plaintiff;*
- f. Mandatory injunction directing the defendants to rectify the Register of Members of the Company, i.e. the defendant No.1 by deleting the name of defendant No.2 as joint holder of 8,61,918 equity shares of the company;*
- g. Mandatory injunction directing the defendant No.2 to return all delivery slips referred to in prayer (d) above to the plaintiff;*
- h. Receiver;*
- i. Permanent Injunction;*
- j. Costs;*
- K. Further or other reliefs;"*

4. In the said title suit, the appellant had taken out an injunction application under Order XXXIX, Rules 1 and 2 read with Section 151 of the Code of Civil Procedure, 1908.

5. The case of the appellant/plaintiff/petitioner in the said application/suit was that he is the Chairman of the Board of Directors of the Company and is the absolute owner of 9, 47, 289 nos. of equity shares of Rs. 10/- each, all fully paid up of and in the company comprising approximately 30.55% of the total, issued, subscribed and paid up capital of the company.

6. The original petitioner Hemendra Prasad Barooah had one son and two daughters. Son of the petitioner predeceased him, who died on 02.10.2007 leaving behind his widow and daughter. O.P No. 2 is one of the married daughters of the petitioner and is purporting to hold 3,16,200 numbers of shares of Rs.10/-each, all fully paid up of and in the company. Petitioner has maintained one account with O.P No. 3 who is a depository participant and one of the depositing accounts of the petitioner is maintained with the O.P No. 3, where O.P No. 2 is a joint account holder.

7. Original petitioner Hemendra Prasad Barooah has set up a Trust namely, "The Hemen Barooah Benevolent and Family Trust" which was registered on 21.11.2011, by which petitioner's entire shareholding of and in

the company, i.e., 9,47,289 numbers of equity shares of and in the company have been bequeathed to the said Trust absolutely and forever.

8. Petitioner has maintained one ICICI Demat Account where he had 8,30,315 numbers of equity shares of Rs.10/- each all fully paid up of and in the company. From 22.12.2008 to 26.03.2009, the petitioner bought 31,603 numbers of shares of Rs.10/- each by open market purchase which was paid up entirely by the petitioner. On 19.03.2009, petitioner transferred the said 8,30,315 numbers of shares maintained by the petitioner in his demat account with ICICI bank to the demat account held in the joint names of the petitioner and the O.P No. 2 in the bank of O.P No. 3. The remaining 85,371 numbers of equity shares of the petitioner were kept in another demat account in the sole name of the petitioner with India Infoline. The said 8,61,918 numbers of equity shares (8,30,315+31,603) of the petitioner maintained in the joint account of the petitioner and the O.P No. 2.

9. The petitioner had contended that the 8,61,918 shares deposited/transferred in the Demat Account were in the joint names of the petitioner and O.P No. 2 only for operational convenience and no beneficial interest in those shares was ever intended to be passed or was passed to O.P No. 2 at any point of time. The petitioner has chosen the O.P No. 2, amongst

the other surviving children of the petitioner, on the sole consideration that except O.P No. 2 none of his children was residing in India. In the Trust deed, a specific statement was also made by the petitioner that the entire consideration for those shares has been paid by the petitioner and the O.P. No. 2 does not have any beneficial interest therein.

10. Petitioner had sent several communications in the last few months to the O.P No. 2 to sign the delivery instruction form of O.P No. 3 for transferring the 8,61,918 numbers of shares from the said Demat Account maintained with the O.P No. 3 to the Demat account in the sole name of the petitioner. The request made by the petitioner to the O.P. No. 2 includes verbal and telephonic communication. However, O.P No. 2 refused to sign the delivery instruction. The petitioner tried all possible means to persuade the O.P No. 2 but the O.P. No. 2 has not responded to any of the letters/communications sent by the petitioner. O.P No. 2 was also not attending Board meetings of the Company despite being a whole time director of the Company until 19.09.2011. On 22.06.2011, petitioner again requested the O.P No. 2 to sign the delivery instruction slip of O.P No. 3. The inter depository delivery instruction issue slip of the O.P. No. 3 was also sent to the O.P. No. 2 by courier on 22.08.2011. O.P No. 2 however, refused to sign the inter depository

delivery instruction issue slip. The petitioner inadvertently sent the entire TIDF/DIS booklet containing the said issue slip along with ten delivery instruction numbering AA44026920-929. The O.P No. 2 was illegally and wrongfully withholding the entire TIDF/DIS booklet containing the said issue slip along with ten delivery instructions numbering as above. On 01.09.2011, a letter was sent by the petitioner requesting the O.P. No. 2 to sign the said inter depository delivery instruction issue slip sent to her on 22.08.2011. O.P No. 2 has failed to respond to such request. The petitioner apprehends that the said TIDS/DIS booklet containing the said issue slip along with ten delivery instruction may be misused and/or used against the interest of the petitioner. Therefore, on 10.09.2011, petitioner requested the O.P. No. 3 to issue a duplicate booklet of delivery instruction for inter depository transfers. The O.P. No. 3, however, refused to accept the said letter on the ground that the signature of the second holder, O.P No. 2 was missing. By a letter dated 10.09.2011 and 19.09.2011, petitioner sent communication to O.P No. 3 calling upon it to issue a duplicate delivery instruction booklet covering inter depository transfers within five days from the date of the said letter and act in terms of the delivery instruction slip to be signed by the petitioner alone for transfer of the said shares to a demat account solely in the petitioner's name. On 14.09.2011, petitioner sent a letter to the Company addressed to O.P No. 3

and called upon the Company, i.e., O.P No. 1 to delete the name of the O.P No. 2 as the second beneficial holder in respect of the said 861918 numbers of shares of the Company from the record.

11. Under the NSDL rules and bylaws and more particularly in rule 12.6.1, it is stated that, in case of death of one of the holders in a joint demat account, shares can be moved to another demat account solely in the name of the surviving holder merely on receipt of the applications in the form specified in Annexure 'O' along with the copy of the death certificate of the deceased duly attested by Notary Public or by a Gazetted officer.

12. It was contended that as the original petitioner Hemandra Prasad Barooah expired, there is every possibility that the O.P No. 2 may transfer the shares to another Demat account of her name as per rule 12.6.1. Therefore, the petitioner had prayed for granting injunction restraining the O.P No. 2 from transferring the said equity shares.

13. On the other hand, learned counsel for the O.P No. 2 had submitted that the O.P No. 2 has no objection in granting injunction restraining the O.P No. 2 from transferring the aforesaid shares.

14. The learned Court below, after considering the materials as well as

submissions of the learned counsel for both sides, came to the view that the petitioner side is the joint owner of the 861918 numbers of shares with O.P No. 2 and even on request by the petitioner, O.P. No. 3 refused to accept delivery instructions on the ground that, signature of the second holder, i.e., O.P No. 2 was missing. Thus, under the given circumstance, it was held that, one of the joint holders of the account alone cannot transfer the shares. At the time of filing of the petition U/O. XXXIX rr. 1 and 2 of the CPC, both the joint account holders were alive. Therefore, the learned Trial Court held that the cause of action for filing this petition for restraining O.P. No. 2 from transferring the shares had not arisen at the time of filing the petition. In other words, the petitioner did not have a prima facie case at the time of filing the petition.

15. Initially when the injunction petition was moved before the Learned Court below, an ex-parte interim order was passed by the Learned Court below on 13.08.2012 whereby, inter-alia, the parties were directed to maintain status quo over the subject matter of the suit till the disposal of the injunction petition.

16. In the meanwhile the original plaintiff Hemendra Prasad Barooah died on 31.07.2013. The deceased/ original plaintiff had executed the last

registered Will and Testament dated 17.09.2012 wherein the appellant is the named sole Executor therein.

17. The appellant in discharge of his duties as the Executor had filed an application for grant of probate before the Hon'ble High Court at Calcutta being PLA No. 316/2013, which was later on converted into a contentious cause and renumbered as Testamentary Suit No. 27/2016. The opposite party No. 2 had filed an affidavit in support of the caveat, which was considered as a written statement upon the suit having assumed the nature of contentious cause. The probate petition, which is converted into a contentious cause is pending before the Hon'ble High Court at Calcutta.

18. Pursuant to Order dated 13.06.2025 passed by the High Court and Order dated 10.07.2025 passed by the learned Civil Judge, Jorhat in TS No. 41/2012, the present appellant was substituted in place of the deceased plaintiff.

19. It is stated and submitted on behalf of the Appellant that when the injunction application came up for hearing before the Learned Court on 06.09.2025, before arguments could commence on the merits of the controversy, a proposal was made by learned counsel appearing for the opposite party No. 2 that the matter can be resolved by grant of reliefs prayed

for in the injunction application as the opposite party No. 2 does not intend to transfer the shares and is only concerned with the vagueness of the status quo order. Being thus taken aback, the counsel appearing for the appellant sought time to get back with instructions and the matter was adjourned to 15.09.2025. On 15.09.2025, the learned counsel appearing for the appellant conveyed the appellant's acceptance of the proposal and requested the Learned Court to dispose of the injunction application in terms of the concession made and also consequently dismiss the two applications filed by the opposite party No. 2 i.e. Misc (J)21/ 2020 for vacating of interim order and Misc (J) 22/2020 for abatement, which suggestion was also accepted by learned counsel appearing for the opposite party No. 2. However, when the order passed on 15.09.2025 which came to be uploaded on 16.09.2025, to the utter shock and surprise of the appellant/Executor, not only the injunction application had been dismissed, certain observations had been made in the order impugned by the Learned Court below which are totally perverse and renders the impugned order null and void and without jurisdiction. Further, the observations were not even the subject matter of the injunction application which was filed by the deceased/original plaintiff and nor were they pleaded by any of the parties.

20. It is further submitted that the impugned order was passed by the Learned Court below on 15.09.2025 in T.S No. 41/2012 dismissing the injunction petition filed by the original plaintiff despite having recorded in paragraph 13 that the opposite party No. 2 has no objection, if the injunction is granted in terms of the injunction application of the original plaintiff to restrain the opposite party No. 2 from transferring the aforesaid chunk of 8,61,918 equity shares. However, despite no objection and consent given by the opposite party No. 2, the Learned Court below proceeded to dismiss the injunction petition and pass the order impugned, which is wholly without jurisdiction and beyond the scope of the plaint and the injunction petition filed by the original plaintiff/deceased Hemendra Prasad Barooah during his lifetime.

21. Accordingly, prayer has been made for setting aside of the impugned order.

22. The learned Senior Counsel appearing for the rival parties have made extensive submissions and have taken the Court through sizeable sets of documents, but the case lies in a very narrow compass. The only points that arise for determination are:

i) Whether, in view of the concession of the defendant/OP No. 2, the

plaintiff/petitioner/appellant was entitled to a temporary injunction as prayed for?

ii) Whether the plaintiff/petitioner/appellant is entitled a further relief of transfer of the 8,61,918 equity shares to its individual/separate account?

Both the points are taken up together for the sake of convenience.

23. At the outset, it would be profitable refer to the prayers made by the plaintiff/petitioner (subsequently substituted by the present appellant) in the application for temporary injunction in the Title Suit No. 41/2012 before the Learned Civil Judge, Jorhat which are as follows

“In the premises aforesaid, it is therefore prayed that Your Honour would be pleased to pass an ad-interim injunction Restraining the Opposite Party No.2, her servants, workmen, employees and agents from causing any transfer, in whatever nature, in respect of 861918 shares of B & A Limited lying with Opposite Party No. 3 in its account Bearing No. DP ID IN 301151 and client ID 26424547 and further restrain the Opposite Party No. 2 from using the delivery slips lying with the Opposite Party No. 2 bearing number from AA44026920 to 929; and restraining/directing the Opposite Party No. 3 namely HDFC Bank Limited not to transfer the 861918 shares of B & A Limited lying in its account Bearing No. bearing DP ID IN 301151 and client ID 26424547; and to issue show-cause notices upon the Opposite Parties as to why the ad-interim injunction should not be made absolute and upon the perusal of the cause/causes shown, if any, Your Honor would be graciously pleased to make the ad-interim injunction absolute; and/or Pass such further other order(s) as your Honor may deem fit and proper.”

24. It is an admitted position that the aforesaid prayer had been conceded to by the defendant/opposite party, which is also reflected in the impugned order as follows:

“On the other hand, learned counsel for the O.P No. 2 has submitted that the O.P No. 2 has no objection in granting injunction restraining the O.P No. 2 from transferring the aforesaid shares.”

25. The same has also been submitted by Mr. D. Mozumder, learned Senior Counsel for respondent No. 2 in the course of hearing of the instant appeal.

26. That being the position, the proper course of action of the part of the learned Trial Court would have been to dispose of the application in terms of the aforesaid concession. It is the admitted position that under the NSDL Rules and By-Laws and more particularly Rule 12.6.1, in case of death of one of the holders in a joint demat account, shares can be moved to another demat account solely in the name of surviving holder merely on receipt of the application in the form specified in Annexure-O along with the copy of the death certificate duly attested by Notary Public or by a Gazetted Officer along with copy of death certificate of the deceased holder. Therefore, the transfer or transmission is not automatic, but requires an application in proper form being made by the surviving account holder, which the defendant No. 2/respondent

No. 2 could not have made in case of disposal of the injunction application in the aforesaid terms. Under the circumstances, the insistence of the Learned Trial Court to adhere to the "legal framework" as understood by it, appears to be misconceived. No violation of the aforesaid rules would have been occasioned by such a consent order and therefore, the question of violation of any legal framework would also not arise. The Learned Trial Court also held that under the aforesaid NSDL Rules, the opposite/respondent No. 2 was empowered to transfer the shares to her individual account upon the death of the other joint holder but that was precisely the fundamental question to be decided in the suit as it is inseparably linked to the question of the real ownership of the said shares, which ownership was claimed by the Plaintiff/Appellant and in respect whereof, a declaration was sought in the suit.

27. At the same time, the appellant/plaintiff cannot, in the instant appeal, be granted a relief which would transgress the contours of the prayers made in the application for temporary injunction in the Title Suit before the Learned Civil Judge, Jorhat, which was limited to a restraint upon the transfer of the 8,61,918 equity shares lying in the demat account No. DP ID IN 301151 (client ID 26424547) to the individual account of the respondent No. 2 and the misuse of the delivery slips as mentioned in the said prayer. There was no

prayer therein for transfer of the said shares from the joint account to the individual account of the Petitioner/Appellant. It is for this reason that this Court deems it unnecessary to burden this judgment by adverting to the erudite submissions of the Learned Senior Counsel for the appellants, the thrust and parry of which was focused chiefly towards that direction, and consequently also to the counter submissions of the Learned Senior Counsel for the Respondents in that regard.

28. In the above view of the matter, the impugned Order dated 15.09.2025 cannot be sustained and is accordingly set aside and the appeal is disposed of with the direction that the respondent No. 2 herein shall not transfer the 8,61,918 equity shares lying in the demat account No. DP ID IN 301151 client ID 26424547 to any other account and the respondent No. 3 is also directed not to facilitate any such transfer.

29. All other orders passed earlier in the instant appeal and the connected IA's as well as order of status quo passed by the Learned Trial Court stand merged in this order and nothing beyond what has been directed herein is to be read into any of the said earlier orders.

30. All pending IA's stand disposed of accordingly.

31. Appeal stands disposed of.

JUDGE

Comparing Assistant