In the High Court at Calcutta
Civil Appellate Jurisdiction
Appellate Side

The Hon'ble Mr. Justice Sabyasachi Bhattacharyya
And
The Hon'ble Mr. Justice Md. Shabbar Rashidi

F.M.A. No.1248 of 2026
+
CAN 1 of 2026

Vishal Jain

-Versus-

Rajendra Kumar Parakh and Another

For the appellant	:	Mr. Shounak Mukhopadhyay, Mr. Shivam Bhimsaria, Ms. Akansha Singhania, ... Advs.
For the respondent no.1	:	Mr. Probal Mukherjee, Sr. Adv., Mr. Swarnavo Roy, Mr. Shoham Sanyal, ... Advs.
Heard on	:	13.11.2026
Reserved on	:	13.11.2026
Judgment on	:	17.11.2026

Sabyasachi Bhattacharyya, J.:-

1. The present appeal has been preferred against the dismissal of an application for temporary injunction filed by the plaintiff/appellant in his money suit. The primary grounds on which the learned trial Judge dismissed the application were that the plaintiff did not pray for any injunction order in the plaint and that there is nothing pleaded by the

plaintiff to the effect that the defendant is actively trying to alienate his properties and that since there are no particulars given by the plaintiff on the allegation of attempting to evade the dues of the plaintiff, the provisions of Order XXXIX of the Code of Civil Procedure (for short, "the Code") are not attracted on the facts alleged in the application and no inherent power would justify the reliefs.

2. Learned counsel for the appellant argues that the suit has been filed on the strength of a promissory note dated February 12, 2018, executed by the defendant/respondent no.1 in favour of the plaintiff/appellant, to pay a sum of Rs.40,00,000/- (Rs.31,00,000/- as principal amount and Rs.9,00,000/- as lumpsum interest) on demand. It is submitted that the said promissory note was the culmination of the acknowledgment of the legal fees due and payable by the defendant no.1 to the plaintiff for professional services rendered by the plaintiff/appellant.

3. Learned counsel submits that the learned Trial Judge, upon being satisfied that a *prima facie* case has been made out and all the yardsticks for grant of injunction being satisfied, had initially granted ad interim injunction as prayed for. Such ad interim order subsisted for about five years. No written objection, however, was filed by the defendants/respondents to the temporary injunction application. Hence, the averments made in the application stood uncontroverted. It is contended that the tests for grant of injunction at the ex parte ad interim stage are higher, in view of the defendant not having any opportunity to controvert the averments made in the injunction application. However, if the said averments remained

uncontroverted by non-filing of any written objection by the defendant, despite getting opportunity, the learned trial Judge had to go by the averments made in the plaint as sacrosanct and pass an order on the basis of the same.

4. It is contended that there are sufficient averments in Paragraph No.35 of the plaint as to the specific properties which the defendant no.1 is trying to dispose of in order to defraud his creditors, including the plaintiff/appellant. Thus, there is no dearth of particulars in the plaint pleadings. Similar pleadings find place in Paragraph No.36 of the injunction application as well. Read in conjunction with the other pleadings in the injunction application, it is evident that the defendant/respondent no.1 is deliberately trying to defraud his creditors, including the plaintiff/appellant, by attempting to dispose of the enumerated properties. Thus, it is argued, the provisions of Order XXXIX Rule 1(b) of the Code are squarely applicable.

5. Learned counsel places reliance on *Rahul S. Shah v. Jinendra Kumar Gandhi and others,* reported at *(2021) 6 Supreme Court Cases 418*, for the proposition that in a suit for payment of money, before settlement of issues, the defendant may be required to disclose his assets on oath, to the extent that he is being made liable in a suit and that the Court may further, at any stage, in appropriate cases during the pendency of the suit, using powers under Section 151 of the Code, demand security to ensure satisfaction of any decree. Thus, it is argued that the parameters of Order XXXVIII Rule 5 of the Code and the reliefs contemplated therein can also be applied and granted respectively in connection with an injunction application.

6. Learned counsel next cites *Tata Chemicals Limited v. Kshitish Bardhan Chunilal Nath and Others*, reported at *(2022) 1 High Court Cases (Cal) 275*, where it was held, *inter alia*, that if there were doubts about exercising power under any of the provisions mentioned therein, that is, Order XXXVIII to Order XL of the Code, it can safely be stated that the Court has inherent power to pass an order of injunction or attachment upon an unimpeachable liquidated claim being demonstrated and upon it being established that the respondents are taking steps to improperly deny the realisation of the claim. When a huge sum of money is claimed and the plaintiff *prima facie* establishes such amount, it was held, he would be entitled to secure his interest keeping in view the amount involved in the suit.

7. It is next argued by the appellant that during pendency of the injunction application, an application under Order XXXIX Rule 2A of the Code was filed by the appellant, alleging violation of the ad interim order passed by the trial Court by the defendant no.1 by selling another flat in the self-same building, which houses residential flat at 13, Kedar Bose Lane, Police Station Bhowanipur, Kolkata – 700 025, which is one of the properties in respect of which ad interim injunction was granted. This, by itself, vindicates the allegation of the plaintiff/appellant that the defendant/respondent no.1 is attempting to defraud his creditors by disposing of his available properties, thereby justifying the grant of injunction. The respondent no.1, despite being fully aware of the injunction order, has entered into such deed, which was also produced in the trial Court.

8. Learned counsel submits that in the absence of any rebuttal to the categorical averments made in the injunction application, the learned trial Judge erred in law and in facts in unnecessarily insisting upon further particulars to refuse injunction.

9. Learned senior counsel appearing for the defendant/respondent no.1 controverts the contentions of the appellant and argues that Order XXXIX Rule 1 of the Code contemplates injunction only in respect of the suit properties and not any and every property. The present suit being in the nature of a money suit, the corporeal rights in the immovable properties in respect of which injunction was sought cannot be termed as "suit properties". Thus, the learned trial Judge was justified in holding that Order XXXIX of the Code is not applicable to the prayer for injunction.

10. It is next argued that there is no concept of any advocate's lien in Indian law. As per the plaint, the premise of the promissory note, which is the plinth of the plaint case, is alleged past dues owed by defendant no.1 to the plaintiff/appellant. Thus, the said premise itself is invalid to raise a claim of a monetary amount.

11. Learned senior counsel further argues that the purported promissory note is conditional/qualified in nature, being dependent on the receipt of consideration upon sale of a "property situated at Nonadanga, behind Ruby", as evident from the purported promissory note itself. Thus, it cannot be said that the plaintiff has an unimpeachable liquidated claim on the basis of such promissory note alone.

12. Learned senior counsel contends that in order to meet the high tests of injunction akin to attachment before judgment in respect of immovable properties in a money suit, the plaintiff/appellant was required at least to furnish the particulars and the names of the alleged creditors of the defendant/respondent no.1 whom the said respondent is seeking to defraud and as to the particulars of the proposed vendors and the properties which are sought to be disposed of. In order to establish that there are several other creditors in the corporate and legal field, as alleged in the plant and injunction application, the relevant accounts, balance-sheets, etc., ought to have been produced to establish such allegation, which are conspicuous by their absence in the present case.

13. Learned senior counsel submits that three valuable properties have been enumerated in the plaint and injunction has been sought in respect thereof. The cumulative value of the said properties would much exceed Rs.40,00,000/-, which is the claim of the appellant on the basis of the promissory note. The rest of the money claim is the subject-matter of adjudication in the suit upon being established by evidence, being in the nature of damages. Thus, the respondent no.1 cannot be held at ransom by obtaining an injunction merely for the asking, on the allegation of dues of a much lesser amount than the valuation of the said properties.

14. It is further argued that the nature of the averments made in the plaint and the injunction application are general in nature, devoid of particulars, as rightly observed by the learned trial Judge.

15. The purported deed of conveyance filed with the application under Order XXXIX Rule 2A of the Code by the appellant merely indicates that the respondent no.1 signed the same in the capacity of the Director of a company which is referred to as a "developer" in the deed. Even the said developer is not described as a vendor. That apart, the Director of a company cannot be said to be the owner of the assets of the company. Thus, the argument that the respondent no.1 has transferred a property situated in the self-same building is devoid of any merit whatsoever.

16. Learned senior counsel cites an unreported judgment in the matter of *Shree Vaishnavi Ispat Ltd. v. M/s. Sharp Ferro Alloys Ltd.*, passed in *FMAT No.75 of 2025*, where a co-ordinate Bench of this Court was pleased to observe that while it is true that the Court has the power to secure even a pure money claim, there must be good reason for doing so. The plaintiff, it was held, must make out a case with supporting material that the defendant is trying to dispose of its properties with the fraudulent motive of rendering infructuous any money decree that may be passed in favour of the plaintiff and against the defendant; some material for the plaintiff's apprehension must be disclosed. It was further held that ordinarily, a money claim shall not be secured, since it would be granting an undue advantage to an unsecured creditor.

17. Learned senior counsel cites another co-ordinate Bench judgment of this Court in the matter of *Kohinoor Steel Private Limited v. Pravesh Chandra Kapoor*, reported at *2010 SCC OnLine Cal 1856*, where the Division Bench had observed that in the said case there was no averment in the plaint or

the injunction application that the defendant intended or threatened to remove or dispose of his property with a view to defrauding his creditors. A vague allegation that the defendant is unable to pay its debts to the creditors, it was held, is not sufficient so long the intention to remove or dispose of the property with a view to defrauding the creditors is alleged. It was further taken note of that no name of any creditor had been given in the said case. Thus, it was held, Order XXXIX Rule 1 had no application to the facts of the said case.

18. Upon hearing learned counsel for the parties, the Court comes to the following conclusions:

19. In the present case, a salient feature is that no written objection was filed at any point of time by the defendants/respondents to controvert the allegations made in the temporary injunction application. Thus, the doctrine of non-traverse is squarely applicable and the Court, at the time of final disposal of the injunction application, had to proceed on the basis that the averments in the injunction application were true, being uncontroverted.

20. Learned counsel for the appellant is justified in arguing that since the learned trial Court itself had recorded its satisfaction that a *prima facie* case for trial had been made out at the ad interim stage, in the absence of any subsequent fact being brought to the notice of the Court on the part of the defendants, the factual scenario remained the same and in view of lack of any change of circumstances, there could be no reason as to why such position should be deviated from.

21. This Court is aware of the settled position of law that the considerations at the *ex parte* ad interim stage of injunction are different from the final hearing of a temporary injunction application. However, insofar as the plaintiff is concerned, the stand remains the same. The cardinal distinction between the ad interim and final stage of an injunction application is the additional facts brought on record by the defendants to resist the injunction application, which would lead the Court to appreciate the materials produced by both parties and, upon evaluation of the same, to come to the conclusion as to whether injunction ought to be granted or not. However, even at the temporary injunction stage, the considerations are at a *prima facie* level, as opposed to the suit, where the plaint averments are to be established independently by evidence led by the plaintiff, even if no written statement is filed by the defendants.

22. Proceeding from such perspective, since the defendants/respondents have not even controverted the pleadings in the injunction application, the tests, on a *prima facie* footing, remained the same for the trial Court as at the ad interim stage.

23. Having held so, the Court is to consider as to whether the learned trial Judge ought to have granted injunction on the basis of the case made out in the plaint and the temporary injunction application.

24. In Paragraph No.36 of the injunction application, there is a specific averment that the defendant/respondent no.1 is heavily indebted to several persons across the corporate and legal community and is attempting to evade the dues of the petitioner. It was further averred that it is

apprehended that the defendants and each of them would attempt to alienate the assets and/or properties which can be used to liquidate the dues of the petitioner, as reflected in the demand promissory note dated February 12, 2018 and that, in such circumstances, the plaintiff/appellant prayed for an appropriate order of injunction restraining the defendant no.1 from alienating and/or transferring and/or incumbering the assets of the properties, as mentioned in the Schedule of the injunction application.

25. In Prayer (a) of the application, injunction has been sought to restrain the defendant/respondent no.1 from creating any third-party interest in respect of the premises mentioned in Paragraph No.35 thereinabove. Although Paragraph No.35 of the injunction application does not specifically give the particulars of any such property, it is evident that the reference was to Paragraph No.35 of the plaint, which contains a chart of three different immovable properties, including the residential flat of defendant/respondent no.1 at 13, Kedar Bose Lane.

26. On a composite reading of the plaint and the injunction application, thus, it would be evident that the properties referred to in Paragraph No.35 of the plaint, which are also reproduced in Schedule-A of the injunction application, are the properties alleged to be owned by the defendants and in respect of which injunction was sought.

27. At the initial stage, that learned trial Judge, *vide* Order dated March 14, 2021, had been pleased to grant an order of injunction on the self-same averments, restraining the defendants from alienating the suit properties for

a limited period, in terms of the prayers made in the temporary injunction application.

28. In the said order, it was specifically recorded that it appeared from the "huge documents" filed on behalf of the plaintiff that there is every possibility to defraud the creditor by the defendants. It was further observed that on careful perusal of the documents filed by the plaintiff, it appeared that the plaintiff rendered service as solicitor to the defendants but payment was not made and under such circumstances, if the apprehension of the plaintiff is materialised by the defendants, then the very purpose of the suit would be frustrated. It was also held that in view of the facts and circumstances ascribed in the plaint and the injunction application, supported by the documents from the side of the plaintiff, it appeared to the Court that there was a strong *prima facie* case which favoured the plaintiff to get an order of injunction and if no injunction was granted, the plaintiff would suffer irreparable loss and injury.

29. Thus, the learned trial Judge had recorded clear satisfaction on a *prima facie* case having been made out even at the *ex parte* ad interim stage. In the absence of any written objection to the injunction application, the self-same averments of the injunction application, on the strength of which ad interim order was passed, remained uncontroverted and acquired finality insofar as the temporary injunction stage was concerned, by application of the doctrine of non-traverse. Thus, the learned trial Judge erred in law in deviating from such position as it stood on the date of grant of ad interim injunction, without recording any specific reason for doing so.

30. The next facet of the matter is the yardstick applicable in grant of injunction of the nature as prayed for by the plaintiff/appellant in a money suit. The relevant portion of Order XXXIX Rule 1(b), as culled out from the said provision, stipulates that where in any suit it is proved by affidavit or otherwise that the defendant threatens, or intends, to remove or dispose of his property with a view to defrauding his creditors, the Court may by order grant a temporary injunction to restrain such act.

31. The next part of the second limb of Rule 1 of Order XXXIX relates to the property in dispute in the suit, whereas the first limb of the second portion of Rule 1 operates irrespective of whether the subject matter of the injunction is the suit property or any other property. The governing rider is whether the defendant threatens or intends to remove or dispose of "his property" "with a view to defrauding his creditors", in which case the Court may, by injunction, restrain "such act", that is, the act of disposing of the defendant's property, whether it is the suit property or otherwise.

32. Applying the said framework, injunction may very well be granted in a money suit as well, provided the parameters of Rule 1(b) are satisfied. Order XXXVIII, Rule 5 of the Code operates in a somewhat different matrix, although there is substantial overlap between the two provisions. As per Rule 5, where the Court is satisfied at any stage, by affidavit or otherwise, that the defendant "with intent to obstruct or delay the execution of any decree that may be passed against him", is about to dispose of the whole or any part of his property or to remove the whole or any part of his property from the local limits of the jurisdiction of the Court, the Court may direct

the defendant either to furnish security or to pass necessary orders attaching the property. In the latter case, however, the Court has to specify the property required to be attached and the estimated value thereof.

33. As opposed to Order XXXVIII Rule 5, where the Court is mandated to estimate the value of the property proposed to be attached, under Order XXXIX, Rule 1(b), the Court has blanket power to grant an ad interim temporary injunction to restrain the defendant from disposing of any of his properties, provided the same is, with a view to defraud his creditors, threatened or intended to be disposed of.

34. Thus, the argument of the respondent no.1 that the valuation of the property-in-question is disproportionate with the monetary claim made by the plaintiff is not applicable to an injunction under Order XXXIX Rule 1(b), although it might have been a relevant consideration under Order XXXVIII Rule 5 of the Code.

35. However, the Court is not oblivious to the fact that even as per the averments made in Paragraph No.35 of the plaint, the injunction has been sought in particular against the defendant/respondent no.1, two of whose properties have been enumerated in the said Paragraph. The third property belongs, as per the said averments, to the defendant no.2 and cannot be the subject-matter of injunction.

36. Thus, in principle, the Court is not powerless to grant injunction under Order XXXIX Rule 1(b), provided the conditions laid down in the said provision are satisfied.

37. In Paragraph No.36 of the injunction application, the plaintiff/appellant has specifically averred that the defendant/respondent no.1 is heavily indebted to several persons across the corporate and legal community and is attempting to evade the dues of the plaintiff and it is apprehended that the defendants will attempt to alienate the assets and/or the properties which can be used to liquidate the dues of the plaintiff in terms of the promissory note dated February 12, 2018, as enumerated in Schedule-A of the injunction application.

38. Since no written objection had been filed at any point of time to the said injunction application, the said averment was mandatorily to be accepted as true by the learned trial Judge for the purpose of disposing of the temporary injunction application, by invocation of the doctrine of non-traverse.

39. The appellant is justified in contending that although, at the *ex parte* ad interim stage, furnishing of particulars might be of relevance, after the stage of affidavits is over and the defendants having chosen not to controvert the allegations made in the injunction application, Paragraph No.36 of the said application would suffice to attract the provisions of Order XXXIX Rule 1(b) of the Code.

40. In *Shree Vaishnavi Ispat Ltd. (supra)*[1], the co-ordinate Bench recognized the power of the Court to secure even a pure money claim, if there is a good reason to do so. The expression "with supporting material" used in the said judgment need not necessarily refer to documentary evidence, since, at the stage of disposal of an injunction application, it might not be possible for the

[1] ***Shree Vaishnavi Ispat Ltd. v. M/s. Sharp Ferro Alloys Ltd. [FMAT No.75 of 2025]***

plaintiff to collect specific documents showing that the defendant is actually attempting to dispose of its properties. In the circumstances of the present case, the averments in the injunction application would suffice as truth, in the absence of any rebuttal of the same by filing of any written objection by the defendants.

41. Thus, in the peculiar circumstances of the case, the prayer for injunction was justified by the averments in the injunction application, which stood uncontroverted till the date of disposal of such application.

42. It is trite law that in an injunction application, the plaintiff is not required to prove to the hilt the *prima facie* title or the plaint case, which can only be the subject-matter of trial on evidence, but to establish a *prima facie* arguable case, raising triable issues to be decided at the final hearing of the suit. In the facts of the present case, such test was sufficiently met by the plaintiff/appellant.

43. As opposed to an order of attachment before judgment under Order XXXVIII Rule 5 of the Code, where the bar is higher since the plaintiff has to establish a strong *prima facie* case that there is a fair chance of a decree being passed in its favour, to avoid execution of which the defendant is attempting to dispose of the property-in-question, in the case of injunction under Order XXXIX Rule 1 (b), it is only required to be shown that there is an apprehension of disposal of the property to defraud creditors.

44. In *Kohinoor Steel Private Limited (supra)*[2], the co-ordinate Bench merely observed that in the said case, there was no specific averment in the plaint or the injunction application that the defendant intended or threatened to remove or dispose of his property with a view to defrauding his creditors and merely a vague allegation was made that the defendant was unable to pay its debts to the creditors, which was held to be insufficient so long the intention to remove or dispose of property with a view to defrauding the creditors is not alleged.

45. In sharp contradistinction therewith, in Paragraph No.36 of the injunction application in the present case, a specific allegation was made that the defendants are trying to defraud their creditors by disposing of their properties, bringing the narrative within the fold of Order XXXIX Rule 1(b) of the Code. Thus, the said decision does not come to the aid of the respondents.

46. In *Tata Chemicals Limited (supra)*[3], relied on by the appellant, however, the co-ordinate Bench merely reiterated the provisions of law as laid down in Order XXXVIII Rule 5, Order XXXIX, and Section 151 of the Code. In Paragraph No.100 thereof, the co-ordinate Bench reiterated that a *prima facie* case is distinguishable from a foolproof case and when the Court finds that a *prima facie* case is made out by the plaintiff then it passes an order of injunction so that the ultimate relief which is claimed by the plaintiff in the suit is not frustrated and the decree which may be passed will remain

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[2] *Kohinoor Steel Private Limited v. Pravesh Chandra Kapoor,* reported at *2010 SCC OnLine Cal 1856*

[3] *Tata Chemicals Limited v. Kshitish Bardhan Chunilal Nath and Others,* reported at *(2022) 1 High Court Cases (Cal) 275*

inexecutable. It was further observed that the Court's power to grant temporary injunction cannot be treated at par with its power to pass an order of attachment before judgment under Order XXXVIII Rule 5 of the Code. It was observed that the standard of proof in the latter case was higher than for grant of injunction. Having held above that Order XXXIX Rule 1(b) of the Code is applicable in the present case, the said observations are rendered academic in the instant context.

47. In Paragraph No.101 of the Judgment, the co-ordinate Bench clearly observed that Section 151 of the Code empowers the Court to invoke its inherent jurisdiction to prevent miscarriage of justice or abuse of process and that such powers are in addition to the powers specifically conferred on the Court by the Code of Civil Procedure, being complementary to those powers.

48. It was also observed in Paragraph No.110 of the said report that "if there were doubts about exercising power" under Order XXXVIII to Order XL of the Code, it can be safely stated that the Court has inherent power to pass an order of injunction or attachment. However, by such observation, the Court tacitly recognized the established legal proposition that the inherent power of the Court under Section 151 of the Code can only be invoked either when there is no provision governing the factual matrix or there is no prohibition to exercise such power. Since, in the present case, the facts of the case are clearly governed by Order XXXIX Rule 1(b) of the Code, the invocation of the Court's inherent power is unwarranted. Such power cannot be exercised where a particular provision is applicable but its parameters

are not met, merely to bypass the rigours of such provision. Only when the factual conspectus does not attract any particular provision of law can the Court invoke its inherent power *ex debito justitiae*, that is, for the ends of justice.

49. Hence, the said decision does not come to the aid of the plaintiff/appellant, although we have otherwise held that the plaintiff is entitled to get relief under Order XXXIX Rule 1(b) of the Code.

50. In *Rahul S. Shah (supra)*[4], the Hon'ble Supreme Court held that in a suit for payment of money, before settlement of issues, disclosure of assets on oath and/or payment of security for satisfaction of the decree may be required on the part of the defendant by the Court, in appropriate cases, using powers under Section 151 of the Code.

51. However, in Paragraph No.41 of the said report, it was clearly observed that having regard to the background discussed therein, there was urgent need to reduce delays in the execution proceedings, for which certain directions were required to be issued to do complete justice in larger public interest under Article 142, read with Articles 141 and 144, of the Constitution of India, to subserve the process of justice so as to bring to an end the unnecessary ordeal of litigation faced by parties awaiting fruits of decree and, in larger perspective, affecting the faith of the litigants in the process of law.

52. However, the invocation of inherent powers, as enumerated therein, is restricted to the direction of disclosure of assets and furnishing of security

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[4] *Rahul S. Shah v. Jinendra Kumar Gandhi and others,* reported at *(2021) 6 Supreme Court Cases 418*

and not the grant of injunction. Such general observations, in the particular context of early disposal of execution cases and suits, are not directly attracted in the present context.

53. However, irrespective of the ratio laid down in the said judgment, the plaintiff/appellant is otherwise entitled to relief as per our discussions.

54. Insofar as the argument of the respondent no.1 is concerned, to the effect that the respondent no.1 merely signed in the capacity of the Director of the developer company in the deed produced in connection with the Order XXXIX Rule 2A proceeding, we find that the defendant/respondent no.1, although acting in the capacity of a Director of the developer company, dealt with a flat at the self-same address, that is 13, Kedar Bose Road, where his own flat, as enumerated in the plaint, is also situated. This, at least, shows that the respondent no.1 is not averse to transferring the properties in the said premises. A Director has a major role to play in the management of a company and from the deed-in-question, it would be evident that the subject-matter of the conveyance fell within the proportionate share of the developer-company, of which the respondent no.1 was a Director. Thus, it cannot be said that such document is entirely irrelevant in the present context.

55. Lastly, the argument of the respondent no.1, that the promissory note is a conditional one, cannot be *prima facie* accepted. From a bare perusal of the said document, it would be evident that the same clearly contemplated that merely on demand, the respondent no.1 promised to pay to the appellant an amount of Rs.40,00,000/-, which is a settled amount. The fact, that the

said sum was on the premise of the value finalized on account of a Nonadanga property behind Ruby and/or other properties, was merely incidental, furnishing the premise of execution of the demand promissory note, and not a condition qualifying the same. The said promissory note is unequivocal, mandating the respondent no.1 to pay the amount of Rs.40,00,000/- merely on demand by the appellant and, thus, is unqualified in nature.

56. Even otherwise, it would be premature at this juncture to direct evaluation of the property in respect of which injunction has been sought, since the present exercise is not under Order XXXVIII Rule 5, but under Order XXXIX Rule 1(b), of the Code, the latter not contemplating any such evaluation.

57. The learned trial Judge, it must be noted, also took into consideration the fact that there was no prayer for injunction in the plaint. However, as reiterated repeatedly in the judgements cited by the parties and contemplated in Order XXXIX Rule 1(b) of the Code, there is no bar to seek injunction in aid of the final reliefs sought in the plaint, even if there is no specific prayer for injunction in the plaint. In a money suit, the final relief is in the form of recovery of a sum of money which, if granted, may not require any further permanent injunction. Thus, in such a situation, the plaintiff need not pray for a relief of permanent injunction in the suit. As opposed to permanent injunction in the form of a decree to be passed at the final stage of the suit, a temporary injunction is operative during pendency of the suit and is intended to preserve the subject-matter of the suit till the final relief is adjudicated upon. Thus, the lack of any prayer for permanent injunction

in the plaint does not invalidate a temporary injunction being sought during pendency of the suit, in aid of the final relief, in a money suit or otherwise. Hence, such logic of the learned trial Judge is also not tenable in the eye of law.

58. In view of the above, the impugned order cannot be sustained. However, since the unimpeachable liquidated claim at this juncture is restricted to Rs.40,00,000/-, an option ought to be given to the respondent no.1 to make good such sum to avoid the rigour of injunction. Moreover, the injunction ought to be restricted to the properties which are relatable to the defendant/respondent no.1, since the injunction has been sought primarily against the said defendant/respondent.

59. Accordingly, F.M.A. No.1248 of 2026 is partially allowed on contest, thereby setting aside the impugned order dated September 19, 2026 passed by the learned Civil Judge (Senior Division), Fourth Court at Alipore, District – South 24 Parganas, in Money Suit No.64 of 2021 and partially allowing the temporary injunction application filed by the plaintiff/appellant in the said suit, granting injunction restraining the defendant/respondent no.1 from selling, transferring, alienating and/or creating any third-party interest in respect of the residential flat of the defendant/respondent no.1 situated at Orbit Sky Garden, 30, Bondel Road, Kolkata – 700 019 and the residential flat of the defendant/respondent no.1, situated at 13, Kedar Bose Lane, Police Station Bhowanipur, Kolkata – 700 025, till disposal of Money Suit No.64 of 2021.

60. However, it will be open to the defendant/respondent no. 1 to deposit the amount of Rs. 40,00,000/- as security in the trial Court in the name of the suit within a month from date. If such deposit is made, the injunction order shall stand automatically vacated. In such event, the said amount shall be invested in a short-term interest-bearing account or scheme by the Registrar of the trial Court with any nationalized bank and shall be subject to the outcome of the suit and the orders passed by the trial Court with regard to such amount at the time of final disposal of the suit.

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

62. It is made clear that the aforesaid observations are tentative in nature insofar as the suit is concerned, and it will be open to the learned trial Judge to decide the suit independently of the above observations, in accordance with law.

63. There will be no order as to costs.

64. Urgent photostat certified copies of this judgment, if applied for, be supplied to the parties upon compliance of all formalities.

(Sabyasachi Bhattacharyya, J.)

I agree.

(Md. Shabbar Rashidi, J.)