IN THE HIGH COURT AT CALCUTTA
CIVIL REVISIONAL JURISDICTION
APPELLATE SIDE

Before:
The Hon'ble Justice Hiranmay Bhattacharyya

CO 2084 of 2026
Exide Industries Ltd. & Anr.
Vs.
Dalhousie Holdings Ltd. & Ors.
with
CAN 1 of 2026

For the Petitioner no. 1	:	Mr. Ratnanko Banerji, Sr. Advocate Mr. Debnath Ghosh, Sr. Advocate Ms. Urmila Chakraborty ..... advocates
For the Petitioner no. 2	:	Mr. Soumabho Ghosh ..... advocate
For the Opposite Party no. 1	:	Mr. Anirban Ray, Sr. Advocate Mr. Debrup Bhattacharjee Mr. Shubham Saha Mr. Arjun Kumar Ray Mr. Siddharth Singh ..... advocates
For the Opposite Party no. 7	:	Mr. Jayanta Mitra, Sr. Advocate Mr. Orijit Chatterjee Ms. Swati Dalmia Ms. Sabarni Mukherjee Ms. Safura Ahmed ..... advocates

Reserved on : 10.08.2026

Judgment on : 15.10.2026

Hiranmay Bhattacharyya, J.:-

1. This application under Article 227 of the Constitution of India is at the instance of the defendant nos. 4 and 5 and is directed against an order

being no. 5 dated 21.05.2026 passed by the learned District Judge 24 Parganas (S) at Alipore in Misc. Appeal No. 114 of 2026.

2. The order dated 20.04.2026 passed by the learned Civil Judge, Senior Division, First Court at Alipore District 24 Parganas (S) in Title Suit no. 549 of 2026 thereby allowing the prayer for ad interim order of temporary injunction was challenged by the petitioners in Misc. Appeal No. 114 of 2026. By the order impugned, the learned District Judge, rejected the prayer for ad interim order of stay of operation of the ad interim order of injunction passed by the learned Trial Judge.

3. The Opposite Party no. 1 filed a suit for declaration that the opposite party no. 1 is sole legal owner of the suit property and for permanent injunction.

4. The case made out by the plaintiff/opposite party no. 1 in the plaint of the said suit may be summarized hereunder as follows. For the sake of convenience, parties are referred to according to their description in the Title Suit.

> The plaintiff became the sole legal owner of premises no. 13 Debendra Lal Khan Road, Kolkata- 700027 by virtue of a registered deed of conveyance dated 15.02.1962. The plaintiff holds the said property in its capacity as trustee under a registered deed of declaration of trust dated 15.11.1962. The lawful title in respect of the said property vested exclusively upon the plaintiff. Plaintiff being the trustee held the property for the benefit of the syndicate members while retaining the exclusive legal title. As per the stipulations of the said deed of trust any change or any transfer of the beneficial interest in any flat could only be effected and recorded through a duly executed and registered supplemental deed of trust with the participation of the plaintiff as trustee. Five supplemental deeds of trust were executed and registered from 1962 to 1982 recording its successive change in the composition of the syndicate and the allocation of the flats. The last of such registered supplemental deed of trust was the 5th

supplemental deed executed on 03.11.1982 which recorded the then-current composition of the syndicate and the allocation of 34 specified "Schedule B" flats among defendant nos. 1 to 7 as the then recognized syndicate members. No registered instrument has been executed by the plaintiff since 1982 recognizing or ratifying any change in the composition of the syndicate or allocation of any flat. During the said period the defendant nos. 1 to 7 have, without the knowledge, consent or participation of the plaintiff as trustee, purported to transfer their alleged beneficial interests in the suit flats, in favour of third parties, through unregistered agreements which are void and legally ineffective. Defendant no. 8 namely Minto Park Syndicate being an association of such members has been an active participant in those void transfers, collecting transfer fees from each of such transactions while simultaneously withheld all information from the plaintiff being the trustee. Plaintiff first became aware of the full extent of the unauthorized transfers upon receipt of the reply dated 10.07.2025 of the defendant no. 1 which for the first time disclosed that it had entered into 7 unregistered agreements purporting to transfer its interest in 7 flats to various third parties, in each case solely on the basis of management committee resolutions of defendant no. 8 and without any reference to or participation of the plaintiff as trustee. The defendant nos. 2 to 7 have not intimated any change or transfers to the plaintiffs in respect of the flats associated with their respective allocations.

5. In the backdrop of such factual matrix, the plaintiff prayed for a declaration that it is the sole legal owner of the suit property being no. 13, Debendra Lal Khan Road, Kolkata- 700027 and for a further declaration that the execution of a registered supplemental trust deed with the participation of the plaintiff as trustee as the only recognized lawful mode of effecting or recording any change in the trust structure, composition of the syndicate or allocation or transfer of any interest in the suit flats and that any purported arrangement, agreement or document not so executed and registered is

incapable of creating, transferring or conferring any right, title or interest in respect of the suit property and for a declaration that no right title or interest of any nature whatsoever in respect of the suit flats or any portion of the suit property subsists in the defendant nos. 1 to 7 or any person claiming through or under them and that the plaintiff as trustee is entitled to deal with the suit property free from any claim or interest of the defendant nos. 1 to 7 or any person claiming through or under the syndicate structure and for permanent injunction restraining the defendant nos. 1 to 8, the respective men agents, assigns and all persons claiming through or under them from in any manner transferring, encumbering, alienating, subletting, parting with possession of or creating any third party rights in respect of the suit flats or any portion of the suit property and for other consequential reliefs.

6. The opposite party filed an application under Order 39 Rule 1 and 2 of the Code of Civil Procedure praying for an order of temporary injunction against the defendant nos. 1 to 8 and/or any person claiming through them. The ad interim order of injunction in similar terms was also prayed for in the injunction application.

7. The case made out by the plaintiff in the injunction application is more or less identical to the case made out in the plaint.

8. The learned Trial Judge by an order dated 20.04.2026 allowed the prayer for ad interim injunction.

9. Being aggrieved by and dissatisfied with the aforesaid order the defendant nos. 4 and 5/petitioners herein preferred the miscellaneous appeal. In connection with the Miscellaneous Appeal the petitioners took out an application for stay of operation of the ad interim order of temporary injunction passed by the learned Trial Judge.

10. The learned District Judge, by the order impugned, rejected the prayer for ad interim stay of operation of the order passed by the learned Trial Judge. Being aggrieved the defendant nos. 4 and 5 have approached this Court.

11. Mr. Banerjee, learned Senior Advocate appearing for the petitioners contended that the Court is under a statutory obligation to direct issuance of notice upon the opposite party before granting injunction. He further contended that only in exceptional circumstances as contemplated under Order 39 Rule 3 of the Code of Civil Procedure the Court can grant an injunction without giving notice of the application to the opposite party but in such cases the Court is duty bound to record reasons in writing for passing an ex parte ad interim order of injunction.

12. Mr. Banerjee contended that the plaintiff has obtained the ex parte ad interim order of injunction by suppressing the agreement dated 25.02.1961 between the plaintiff and several companies including the petitioners being the syndicate members of Minto Park Syndicate. Mr. Banerjee contended that the ownership of the flats allocated to the petitioners as mentioned in the 2nd Schedule of the five registered supplemental agreements and more particularly the 5th supplemental agreement dated 03.12.1982 stood transferred and vested with all rights incident to ownership in favour of the petitioners and the petitioners having been put in possession of the respective flats and the consideration of the land and building have also been paid by the petitioners to the original owners, the petitioners are entitled to exercise all their rights as owners thereof and cannot be restrained from exercising their ownership rights including dealing with the flats in any manner whatsoever.

13. Mr. Banerjee contended that the learned Trial Judge without considering the fact that the plaintiff failed to satisfy the urgency for passing an ex parte ad interim order of injunction, passed a restraint order upon the defendant nos. 1 to 8 from dealing with their property as a lawful owner thereof without recording any reasons. Mr. Banerjee further submitted that the learned Judge of the Appellate Court also failed to appreciate that the learned Trial Judge passed an ex parte ad interim order of injunction without recording any reasons as has been mandated in terms of proviso to Order 39 Rule 3 of the Code of Civil Procedure.

14. Mr. Banerjee submitted that an ex parte ad interim order of injunction can be vacated by the High Court in exercise of powers under Article 227 of the Constitution of India if the High Court finds that provisions contained in the proviso to Order 39 Rule 3 of the Code of Civil Procedure has not been satisfied. In support of such contention he placed reliance upon the decision of the Hon'ble Supreme Court in the case of **Time City Infrastructure & Housing Ltd. v. State of U.P.,** reported at **2025 SCC OnLine SC 1674.**

15. Mr. Mitra, learned Senior advocate appearing for the opposite party no. 7 contended that there was no urgency for passing an ex parte ad interim order of injunction by the learned Trial Judge. He contended that the 5th and last supplemental trust deed was executed way back in the year 1982 and the plaintiff approached the learned Trial Judge only in the year 2026 alleging that several flats are being transferred. He thus, contended that the plaintiff was sleeping over its alleged rights from 1982 till 2026. He contended that the plaintiff was well aware of the transfers made in the meantime and have approached the Court at a belated stage with a frivolous plea.

16. Mr. Mitra contended that as per the terms and conditions of the agreement 25.11.1961 each syndicate members are the beneficial owners of the respective flats and they are in exclusive possession of such flats. He further contended that in view of the specific declaration made in the five supplemental deeds of trust to which the plaintiff is a signatory, the plaintiff do not have any right, title and interest in the suit flats. He further contended that the members of the syndicate have paid the consideration money for the purchase of the land and construction of the building thereupon and are also in possession of the flats in question. He further contended that the members of the syndicate are entitled to exercise their rights of ownership in respect of the suit flats and the defendants cannot be restrained from dealing with the flats in any manner whatsoever.

17. Mr. Mitra further contended that the ad interim order of injunction is liable to be vacated for suppression of the agreement dated 25.11.1961 which is a

relevant material. Mr. Mitra contended that the learned District Judge failed to perform his duty as an appellate court by not staying the operation of the ex parte ad interim order of injunction which was passed by ignoring the mandate of the proviso to Order 39 Rule 3 of the Code of Civil Procedure.

18. Mr. Ray learned Senior Advocate appearing for the plaintiff seriously disputed the contentions of Mr. Banerjee and Mr. Mitra. He contended that after execution and registration of the last and 5th supplemental deed of trust dated 03.11.1982 transfers were made by the defendant nos. 1 to 7 without the knowledge or participation of the plaintiff as the trustee. He further contended that the plaintiff first became aware of the unauthorized transfers upon receipt of the reply dated 10.07.2025 of the defendant no. 1 wherein it was disclosed that seven unregistered agreements have been entered into purporting to transfer its interest in seven flats to various third parties. He contended that in the plaint as well as in the injunction application the plaintiff has narrated the facts and circumstances necessitating passing of an ex parte ad interim order of injunction.

19. Mr. Ray contended that the learned Trial Judge after being satisfied with the urgency involved in the matter passed an ex parte ad interim order of injunction. He further submitted that the learned District Judge being conscious of the scope and nature of an appeal under Order 43 Rule 1(r) of the Code of Civil Procedure rightly refused to pass an ad interim stay of operation of the order of injunction. He contended that in a Miscellaneous Appeal arising out of an order granting temporary injunction, no stay of operation of such an order should be granted by the appellate court. In support of such contention he placed reliance upon the decision of the co-ordinate benches in the case of **In Re: Goutam Kumar Hada vs State** reported at **(1994) ILR (1) Cal 72; Mobassor Hussain and ors. vs. Manik Chandra Pal** reported at **(2005) 4 CHN 499**; order dated 13.02.2020 passed in **CO 118 of 2014** in the case of **Suman Biswas vs. Saroj Biswas** and another; order dated 06.10.2023 in **CO 2890 of 2023 in Aniruddha Lahiri and another vs. Anand Saraf and another;** order dated 04.02.2026 **in CO**

4350 of 2024 in the case of **Smt. Rekha Bittar Hazra alias Rekha Bittar vs. The Chairman, Bolpur Municipality.**

20. Mr. Ray further contended that flats were transferred by the defendants without the knowledge and participation of the plaintiff which amounts to fraud being perpetuated by the defendants. He further contended that the fraud perpetuated by the defendants were detected only upon receipt of the reply letter dated 10.07.2025 and immediately thereafter the plaintiffs have approached the Court by filing a suit and prayed for an order of injunction. In support of his contention that a party should not be penalized for failing to initiate legal proceedings when the facts and material necessary for him to do so have been willfully concealed, Mr. Ray placed reliance upon a decision of the Hon'ble Supreme Court in the case of **Pallav Seth vs. Custodian and Ors** reported at **(2001) 7 SCC 549**.

21. Mr. Ray further contended that the scope of interference by the appellate court in an appeal against an order of temporary injunction is very limited and stringent and such interference is permissible if the order of injunction passed by the learned Trial Judge suffers from perversity rather than a mere error of fact or law. In support of such contention he placed reliance upon a judgment of the Hon'ble Supreme Court delivered on 02.11.2024 in Civil Appeal No. 13001 of 2024 in the case of **Ramakant Ambalal Choksi vs. Harish Ambalal Choksi** reported at **(2024) INSC 910**. Mr. Ray further contended that while exercising the supervisory jurisdiction under Article 227 of the Constitution of India the High Court has to see whether the inferior court or Tribunal has proceeded within its parameters and not to correct an error apparent on the face of the record, much less of an error of law. In support of such contention he placed reliance upon a decision of the Hon'ble Supreme Court in the case of **Sadhana Lodh vs. National Insurance Company and Another** reported at **(2003) 3 SCC 524**.

22. Heard the learned advocates for the parties and perused the materials placed.

23. The question that arises for consideration is whether the learned Judge of the Appellate Court was justified in rejecting the prayer for ad interim stay of operation of the order of injunction passed by the learned Trial Judge.

24. The three well established principles for grant or refusal of temporary injunction are as follows-

    (i) Whether the petitioner has made out a prima facie case

    (ii) Whether balance of convenience is in his favour and

    (iii) Whether the petitioner would suffer irreparable loss and injury.

25. It is now judicially settled that in order to make out a prima facie case the plaintiff need not establish his title. It is enough if the plaintiff can show that he has raised a fair question as to the existence of a right which he alleges. For grant of interlocutory injunction, the Court has to see that there is a bona fide contention between the parties and then on which side, in the event of success, lies the balance of convenience. At the interlocutory stage the Court may only consider whether triable issues have been raised by the plaintiff and whether substantial questions are to be investigated.

26. The Hon'ble Supreme Court in **Dalpat Kumar vs. Prahlad Singh** reported at **(1992) 1 SCC 719** held that existence of the prima facie right and the infraction of the enjoyment of his property or the right is a condition precedent for the grant of temporary injunction. Prima facie case is not to be confused with prima facie title which has to be established on evidence at the trial. Prima facie case is substantial question raised, bona fide which needs investigation and a decision on merits. The Hon'ble Supreme Court held thus-

> *"5. Therefore, the burden is on the plaintiff, by evidence aliunde by affidavit or otherwise, to prove that there is "a prima facie case" in his favour which needs adjudication at the trial. The existence of the prima facie right and infraction of the enjoyment of his property or the right is a condition precedent for the grant of temporary injunction. Prima facie case is not to be confused with prima facie title which has to be established on evidence at the trial. Only prima facie case is a*

substantial question raised, bona fide, which needs investigation and a decision on merits. Satisfaction that there is a prima facie case by itself is not sufficient to grant injunction. The Court further has to satisfy that non-interference by the court would result in "irreparable injury" to the party seeking relief and that there is no other remedy available to the party except one to grant injunction and he needs protection from the consequences of apprehended injury or dispossession. Irreparable injury, however, does not mean that there must be no physical possibility of repairing the injury, but means only that the injury must be a material one, namely one that cannot be adequately compensated by way of damages. The third condition also is that "the balance of convenience" must be in favour of granting injunction. The Court while granting or refusing to grant injunction should exercise sound judicial discretion to find the amount of substantial mischief or injury which is likely to be caused to the parties, if the injunction is refused and compare it with that which is likely to be caused to the other side if the injunction is granted. If on weighing competing possibilities or probabilities of likelihood of injury and if the Court considers that pending the suit, the subject matter should be maintained in status quo, an injunction would be issued. Thus, the Court has to exercise its sound judicial discretion in granting or refusing the relief of ad interim injunction pending the suit.

(emphasis supplied)

27. Ordinarily before granting injunction, court has to direct notice of the application to be given to the opposite party. However, only in exceptional cases where it appears to the Court that the object of granting the injunction would be defeated by the delay in directing notice of the application to be given to the opposite party before granting an injunction, an injunction can be granted without giving notice of the application to the opposite party. However, in such exceptional cases the proviso to Order 39 Rule 3 comes into play whereby the Court is under an obligation to record the reasons for its opinion that the object of granting the injunction would be defeated by the delay and require the applicant to take steps as provided under Clause (a) and (b) to the proviso.

28. Recording of reasons as per the proviso to Order 39 Rule 3 of the Code of Civil Procedure has been held to be mandatory by the Hon'ble Supreme

Court in the case of **Shiv Kumar Chadha v. Municipal Corpn. of Delhi,** reported at **(1993) 3 SCC 161** the Hon'ble Supreme Court held thus-

> *"34. The imperative nature of the proviso has to be judged in the context of Rule 3 of Order 39 of the Code. Before the proviso aforesaid was introduced, Rule 3 said "the court shall in all cases, except where it appears that the object of granting the injunction would be defeated by the delay, before granting an injunction, direct notice of the application for the same to be given to the opposite party". The proviso was introduced to provide a condition, where court proposes to grant an injunction without giving notice of the application to the opposite party being of the opinion that the subject of granting injunction itself shall be defeated by delay. The condition so intro- duced is that the court "shall record the reasons" why an ex parte order of injunction was being passed in the facts and circumstances of a particular case. In this background, the requirement for recording the reasons for grant of ex parte injunction cannot be held to be a mere formality. This requirement is consistent with the principle, that a party to a suit, who is being restrained from exercising a right which such party claims to exercise either under a statute or under the common law, must be informed why instead of following the requirement of Rule 3 the procedure prescribed under the proviso has been followed. The party which invokes the jurisdiction of the court for grant of an order of restraint against a party, without affording an opportunity to him of being heard, must satisfy the court about the gravity of the situation and court has to consider briefly these factors in the ex parte order. We are quite conscious of the fact that there are other statutes which contain similar provisions requiring the court or the authorities concerned to record reasons before exercising power vested in them. In respect of some of such non-compliance therewith will not vitiate the order so passed. But same cannot be said in respect of the proviso to Rule 3 of Order 39. The Parliament has prescribed a particular procedure for passing of an order of injunction without notice to the other side under exceptional circumstances. Such ex parte orders have far-reaching effect, as such a condition has been imposed that court must record reasons before passing such order. If it is held that the compliance with the proviso aforesaid is optional and not obligatory, then the proviso by the Parliament shall be a futile exercise and that part of Rule 3 will be a surplusage for all practical purposes. Proviso to Rule 3 of Order 39 of the Code, attracts the principle that if a statute requires a thing to be done in a particular manner it should be done in that manner or not all."*
>
> (emphasis supplied)

29. It, therefore, follows that recording of reasons by the Court for its opinion that the object of granting the injunction would be defeated by the delay is

mandatory in case the Court proposes to grant an injunction without giving notice of the application to the opposite party. However, recording of reasons as to the urgency is in addition to the satisfaction of the Court of the three well settled principles for grant of injunction in case a Court is inclined to pass an ad interim order of injunction.

30. In the case on hand the learned Trial Judge noted the case made out by the plaintiff in the injunction application as well as the documents produced by the plaintiff in support of the case made out in the injunction application. After considering the registered deed of conveyance dated 15.02.1962 and the declaration of the trust dated 15.11.1962 supported by KMC Property Tax Receipt dated 31.03.2026 standing in the plaintiff's name, the learned Trial Judge arrived at a finding that the plaintiff's title as registered owner and trustee of the suit property has been established. The learned Trial Judge also took note of the admission made by the defendant in the reply letter dated 10.07.2025 that the interest of the defendants is that of "limited beneficial interest" and upon going through the said reply letter the learned Trial Judge returned a finding that all seven transfers were effected solely on the basis of management committee resolution of the defendant no. 8 without any participation of the plaintiff as trustee. The learned Trial Judge further took note of the various clauses in the unregistered agreements dated 09.10.2015 and 21.06.2008 that were placed on record and arrived at a finding that the said agreements expressly acknowledges that a registered supplemental deed of trust with the participation of the trustees was required to complete the transfer which admittedly was never executed. The learned Trial Judge further observed that the said agreements being unregistered and executed on a stamp paper of Rs. 100/- only renders them void and legally ineffective in view of Section 54 of the Transfer of Property Act, 1882 and Section 17 of the Registration Act, 1908. The learned Trial Judge further observed that the defendant no. 8's withdrawal of the forged assessment form submitted to KMC is itself an admission that the said document was not a valid document. The learned Trial Judge further recorded a prima facie view that the persons in occupation through

unregistered instrument cannot be said to have any recognized right and title to resist the claim of the plaintiff as sole registered owner and trustee and the balance of convenience favours protection of the plaintiff's title during the pendency of the suit.

31. The learned Trial Judge in details have recorded as to how the plaintiffs have established their prima facie case. The learned Trial Judge further held that the balance of convenience and inconvenience is entirely with the plaintiff. The learned Trial Judge further held that any further dealing, encumbrance or creation of third party interests in respect of the "Schedule B" flats will give rise to complications incapable of being undone by a money decree alone. The learned Trial Judge further noted that the plaintiff has already submitted a chain of at least seven disclosed unregistered transfers in respect of the flats of defendant no. 1 alone. The learned Trial Judge ultimately held that the plaintiff will suffer irreparable loss and injury if injunction is not granted.

32. The learned Trial Judge after recording in details that the three well settled principles for grant of injunction namely prima facie case to go for trial; balance of convenience and inconvenience and irreparable loss and injury has been satisfied in the instant case proceeded to consider the aspect of urgency. The learned Trial Judge held that if the notice is given of the present suit to the defendants, it may further accelerate the dealings and transfers in respect of the suit flats, create additional third party interest and introduce further complication that would defeat the very relief sought for in the said suit. The learned Trial Judge after recording that there is sufficient cause for the plaintiff to move ex parte and after noting that the title of the plaintiff is clear and the admission of the defendants is on record, delay will defeat justice unless an immediate ad interim injunction is passed.

33. Thus, the learned Trial Judge considered all the aspects including urgency that are necessary for passing an ad interim order of injunction.

34. This Court shall now consider whether the learned District Judge exercised its appellate powers in accordance with law or not. Before answering the said question it would be apt to take note of the scope of an appeal against grant or non-grant of interim injunction.

35. The Hon'ble Supreme Court in **Wander Limited vs. Antox India Pvt. Ltd**. reported at **1990 Supp SCC 727** held that in an appeal against an order of interim injunction the appellate court will not interfere with the exercise of discretion of the Court of the first instance and substitute its own discretion, except where the discretion has been shown to have been exercised arbitrarily or capriciously or perversely or where the Court has ignored the settled principles of law regulating grant or refusal of interlocutory injunctions. The appellate Court will not reassess the material and seek to reach a conclusion different from the one reached by the Court below. If the discretion has been exercised by the appellate court reasonably and in a judicial manner, the fact that the appellate court would have taken a different view may not justify interference with the trial courts exercise of discretion.

36. The Hon'ble Supreme Court in **Ramakant Ambala Choksi** (supra) after noticing the decision in **Wanders Limited** (supra) and various other subsequent decisions held that with the passage of time the test laid down in **Wanders Limited** (supra) as regards the scope of interference has been more stringent over a period of time. The Hon'ble Supreme Court held that the emphasis is now more on perversity rather than a mere error of fact or law in the order granting injunction pending the final adjudication of the suit. The Hon'ble Supreme Court held thus-

> *"32. The appellate court in an appeal from an interlocutory order granting or declining to grant interim injunction is only required to adjudicate the validity of such order applying the well settled principles governing the scope of jurisdiction of appellate court under Order 43 of the CPC which have been reiterated in various other decisions of this Court. The appellate court should not assume unlimited jurisdiction and should guide its powers within the contours laid down in the Wander (supra) case."*

37. The co-ordinate bench in **Goutam Kumar Hada** (supra) after noticing that the scope of a Miscellaneous Appeal arising out of an order granting or refusing to pass an ad interim order of injunction in the suit is whether the order granting ad interim injunction passed by the learned Trial Judge is legal or not, held that such an appeal should be heard expeditiously by the lower appellate court but the lower appellate court should not pass any ad interim order resulting practically allowing the appeal itself at the initial stage without hearing the other side. The aforesaid proposition of law has been reiterated in **Mobasser Hussain** (supra), **Suman Biswas** (supra), **Aniruddha Lahiri** (supra) and **Rekha Bitter Hazra** (supra).

38. It logically follows from the aforesaid discussion that a Miscellaneous Appeal arising out of order granting ad interim order of injunction should be disposed of expeditiously but normally no stay of operation of the order granting temporary injunction should be passed resulting practically allowing the appeal itself at the initial stage.

39. Turning back to the impugned order this Court finds that the learned Judge of the appellate court specifically noted that the learned Trial Judge considered the documents that were placed on record and after perusing the order of the learned Trial Judge held that the learned Trial Judge have considered materials in its entirety with reference to urgency pleaded in the injunction application and passed an ad interim injunction considering the basic parameters namely prima facie case, balance of convenience and inconvenience and irreparable loss and injury.

40. After going through the impugned order this Court is of the considered view that the learned Judge of the appellate court was *prima facie* satisfied that the learned trial judge passed the ad interim order of injunction keeping in mind the proviso to Order 39 Rule 3 of the Code of Civil Procedure and the settled principles of grant of injunction.

41. To the mind of this Court, the refusal to pass an ad interim order of stay of operation of the order of injunction passed by the learned Trial Judge is in

consonance with the proposition of law laid down in **Goutam Kumar Hada** (supra).

42. At this stage it would be relevant to take note of the submission of the learned senior counsels for the petitioners and the opposite party no. 7 that the ad interim order of injunction was obtained by the plaintiffs by suppressing a material document. Order 39 Rule 4 of the Code of Civil Procedure provides for a remedy to a person dissatisfied with an order of injunction in case a party has knowingly made a false and misleading statement in relation to a material particular and the injunction was granted without giving notice to the opposite party. In such a case upon an approach being made by a party dissatisfied with the order of injunction, the Court in exercise of its powers under Order 39 Rule 4 of the Code can vacate, discharge, vary or set aside such order of injunction.

43. In the case on hand, the petitioners instead of approaching the learned Trial Judge with an application under Order 39 Rule 4 of the Code alleging suppression of material facts, made out a case of suppression in an application for stay in the Miscellaneous Appeal.

44. As to whether the issue of alleged suppression of certain material documents can be allowed to be raised in a Miscellaneous Appeal from an ad interim order of injunction passed by the learned Trial Judge, this Court refrains from making any observation on such issue at this stage. However, since an allegation of suppression of material fact has been made out in the stay application, an opportunity should be afforded to the plaintiff to deal with such allegation.

45. This Court finds that the learned District Judge afforded an opportunity to the respondents in the Miscellaneous Appeal to file written objection to the stay application and fixed a date for hearing of the stay application and the hearing of the appeal.

46. In **Sadhana Lodh** (supra), the Hon'ble Supreme Court held that the supervisory jurisdiction of the High Courts under Article 227 of the

Constitution of India is confined only to see whether the inferior court or tribunal has proceeded within its parameters and not to correct an error apparent on the face of the record, much less of an error of law.

47. In the case on hand the Miscellaneous Appeal and the stay application are pending. Only the prayer for ad interim stay of operation of the order of injunction was refused by the impugned order. To the mind of this Court, the learned Judge of the Appellate Court proceeded within its parameters.

48. In **Time City Infrastructure and Housing** (supra), the Hon'ble Supreme Court noted that the Hon'ble High Court under Article 227 of the Constitution interfered with an order of injunction on the ground that the Trial Court has passed the order in a cursory manner and has not recorded any existence of a *prima facie* case, the balance of convenience or irreparable hardship. No reasoning as has been mandated in terms of proviso to Order 39 Rule 3 of the Code of Civil Procedure has been recorded. The Hon'ble Supreme Court after reiterating the proposition of law laid down in **Shiv Kumar Chadha** (supra) that the proviso to Order 39 Rule 3 is mandatory, held that if the Court is satisfied of non-compliance with the provisions contained in the proviso, the ex parte order of injunction can be vacated. The said decision is distinguishable on facts as this Court has already observed that the learned Trial Judge has recorded reasons as to the satisfaction of the tests laid down for grant of ad interim injunction. Thus, the said reported decision cannot come to the aid of the petitioner.

49. In view of the aforesaid discussion this Court holds that the learned Judge of the appellate court was right in rejecting the prayer for ad interim order of stay of the order of injunction passed by the learned trial Judge.

50. For all the aforesaid reasons C.O. No. 2084 of 2026 stands dismissed. There shall be, however, no order as to costs.

51. The learned Judge of the appellate court is requested to make an endeavor to dispose of the Misc. Appeal along with connected applications strictly in

accordance with law and as expeditiously as possible without granting unnecessary adjournments to either of the parties.

52. Before parting, it is clarified that the finding recorded hereinbefore are only to support the ultimate conclusions in this order and the learned Judge of the Appellate Court shall proceed to decide the Miscellaneous Appeal and the connected application in accordance with law and without being influenced by the aforesaid observations.

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

(HIRANMAY BHATTACHARYYA, J.)