

(2025) 01 CAL CK 1684

In the Calcutta High Court, Appellate Side

Case No : CO No.4284 of 2024 With CO 4285 of 2024

Jaydeep Chakraborty

APPELLANT

Vs

Snehasish Bhaumic & Ors

RESPONDENT

Date of Decision : 03-01-2025

Acts Referred:

Code of Civil Procedure, 1908 — Section 151, Order 2 Rule 2
Limitation Act, 1963 — Section 5

Citation : (2025) 01 CAL CK 1684

Hon'ble Judges : Raja Basu Chowdhury, J

Bench : Single Bench

Advocate : S. N. Mookherjee, Ratnanko Banerjee, Soumya Majumder, Biswaroop Bhattacharya, Sudhasatwa Banerjee, Deepan Kumar Sarkar, Saptrash Banerjee, Samriddha Sen, Sandip Dasgupta, Souma Sil, Jaydeep Kar, Saptansu Basu, Jishnu Saha, Joy Saha, Arindam Banerjee, Deepti Priya, Sandip Dasgupta, Souma Sil, Siddhartha Banerjee, Shaunak Ghosh, Saheli Sen, Ayantika Saha

Final Decision : Disposed Of

Judgement

Raja Basu Chowdhury, J

1. Leave is granted to the petitioner's advocate on record to correct the cause title thereby deleting the word Appellate Side therefrom. Leave is also granted to incorporate the proper valuation of the application and to correct the prayer portion, in course of the day.

2. Challenging the orders dated 5th December, 2024 passed by the learned District Judge, South 24-Parganas, Alipore, in Misc. Appeal Nos. 403 and 404 of 2024, the above revisional applications have been filed.

3. In order to appreciate the controversy involved, it is necessary to set forth the facts leading to filing of the aforesaid revisional applications.

4. The records would reveal that the opposite parties had instituted a suit before the Court of learned 4th Civil Judge, (Junior Division) at Alipore which was

registered as T.S. 1776 of 2024, inter alia, praying for the following reliefs:

- "a) Leave under Order II Rule 2 of the Code of Civil Procedure, 1908;
- b) A decree of declaration may be passed declaring that the requisition issued by the defendant no. 1 to 12 on 31st August, 2024 is a nullity and as such, cannot be acted upon;
- c) A decree of declaration may be passed declaring that the notice dated 29th September, 2024 calling a Special General Meeting of the proforma defendant society is a nullity and as such cannot be acted upon;
- d) A decree of declaration may be passed declaring that the minutes of the meeting of the purported Special General Meeting of the proforma defendant society held on 30th September, 2024 at 9.30 a.m. is a nullity and as such, cannot be acted upon;
- e) A decree of permanent injunction may be passed restraining the defendants from giving any effect and/or further effect to the requisition issued by the defendant no. 1 to 12 on 31st August, 2024;
- f) A decree of permanent injunction may be passed restraining the defendants from giving any effect and/or further effect to the notice dated 29th September, 2024 calling a Special General Meeting of the proforma defendant society.
- g) A decree of permanent injunction may be passed restraining the defendants from giving any effect and/or further effect to the minutes of the meeting of the purported Special General Meeting of the proforma defendant society held on 30th September, 2024 at 9.30 a.m.;
- h) A decree of permanent injunction may be passed restraining the defendants from operating the bank accounts of the proforma defendant society in any manner whatsoever unless the instrument of payment, including cheque, NEFT and RTGS are signed by the Chairman of the Defendant No. 1 Society, Col, Amitava Poddar;
- i) injunction;
- j) Receiver;
- k) Attachment before judgment;
- l) Commissioner;
- m) Costs;
- n) Such further and/or other reliefs.

5. Simultaneously, with the filing of the aforesaid suit the plaintiffs/opposite parties moved an injunction application seeking temporary injunction restraining the defendants from giving effect to the requisition issued by the defendant nos. 1 to 12 and the defendant nos. 14 to 39 on 31st August, 2024 as also for an

order of temporary injunction restraining the defendants from giving effect and/or further effect to the minutes of the special general meeting of the proforma defendant society held on 30th September, 2024 at 9.30 a.m.

6. By an order dated 5th October, 2024 the learned Court upon hearing the plaintiffs was, inter alia, pleased to observe that it did not find any strong prima facie case for trial and as such refused to pass any ad interim order in favour of the plaintiffs at that stage. Records would, however, reveal that an application under Section 151 of the Code of Civil Procedure was moved on 7th October, 2024. The learned Court considering the urgency involved had taken up hearing of the said application and while allowing the same had restrained the defendants from giving effect to the notice/e-mail dated 6th October, 2024 and the minutes of the meeting held on 30th September, 2024 as also restrained the defendants from obstructing the functioning of the proforma defendant society by the Governing Council as also from operating the bank account of the society till 12th November, 2024. The aforesaid order was passed ex parte.

7. The records would also reveal that challenging the aforesaid order two appeals have been filed before the Court of the learned District Judge, at Alipore which have been registered as Misc. Appeal Nos. 403 and 404 of 2024. Since, there was delay in preferring the appeals, applications under Section 5 of the Limitation Act, 1963 (hereinafter referred to as the "said Act") also accompanied the said appeals. The appeals and the applications under Section 5 of the said Act and the stay applications were moved by way of put up petition on 26th November, 2024. The learned Court in Misc. Appeal no. 404 of 2024 upon hearing the parties and upon noting from the office report that the appeal had been filed beyond the prescribed period, though considering the urgency, adjourned the matter and fixed it on 3rd December, 2024 for hearing of the application under Section 5 of the said Act, followed by the hearing of the stay application subject to the fate of the application filed under Section 5 of the said Act. On 5th December, 2024, the learned Court upon hearing the learned advocates appearing for the respective parties was of the view, having regard to the objection raised in relation to the application under Section 5 of the said Act, the petitioner be granted liberty to prove the controverted facts relating to the application under Section 5 of the said Act by submitting evidence on affidavit prior to its adjudication by the Court thereby submitting himself to cross-examination. As would appear from the above order by reasons of the aforesaid direction, the application for stay was not taken up for consideration by the learned Court. An identical order was passed on 5th December, 2024 in Misc. Appeal No. 403 of 2024. Challenging the aforesaid orders, the revisional applications have been filed.

8. Mr. Mookherjee, learned senior advocate appearing in support of the revisional application, being CO 4284 of 2024, by drawing attention of this Court to the order impugned has submitted, ordinarily while hearing an application under Section 5 of the said Act, such application is required to be taken up for

consideration on the basis of the statements made in the application which is supported by an affidavit. He would submit, admittedly, in this case, there is a delay of 15 days. Proper and sufficient explanation has been provided in the application as regards the delay in filing the appeal. The learned Court was made aware with regard to the urgency involved as by reasons of the ex parte ad interim order, debit freeze was placed on the bank accounts of the society, which has resulted in the society failing to meet its obligation for securing life saving drugs for the critical patients. It is in the facts as aforesaid that the learned Court had fixed the matter for hearing of the application under Section 5 of the said Act followed by hearing of the stay application. Unfortunately, the procedure adopted by the learned Judge on 5th December, 2024 to defer the hearing of the stay application after the disposal of the application under Section 5 of the said Act by way of trial on evidence is an irregularity in procedure. He further submits that by reasons of the ex parte order dated 7th October, 2024 the bank accounts of the society have been placed under debit freeze. The society is unable to utilize the funds. At the time of filing of the application a sum of Rs.1087511/- is due and payable by the society on account of salaries of staff, allowance of staff, medicine suppliers and equipment suppliers, etc. By reasons of the aforesaid life saving drugs are not being supplied to the society and the aforesaid has created a situation where the patients have been suffering the most.

9. Mr. Basu, learned senior advocate appearing in support of the application, being CO 4285 of 2024 has submitted that at present there are 513 critically ill patients admitted and by reasons of the aforesaid ex parte order, the patients are suffering immensely. He submits that this Court in the given facts is not powerless to do complete justice between the parties and can very well appoint administrator for the purpose of ensuring that the patients do not suffer, and that the outstanding payments/bills to the medicine suppliers are met. He would submit that the statutory dues including electricity bills are outstanding and it is more likely than not if the above situation prevails the electricity connection of the society shall be disconnected. In support of the above contentions, reliance has been placed on the judgment delivered in the case of Comptroller and Auditor-General of India, Gian Prakash, New Delhi and Another v. K. S. Jagannathan and Another, reported in (1986) 2 SCC 679.

10. Per contra, Mr. Banerjee, learned advocate appearing on behalf of the opposite parties would submit that admittedly in this case, the order of injunction dated 7th October, 2024 has been passed. The same is valid and subsisting. Although, the petitioner had challenged the said order and moved an application for stay, by an order dated 26th November, 2024 the learned Court had categorically recorded that the application under Section 5 of the said Act shall be heard first which shall be followed by hearing of the stay application. He would submit that there is no appeal from the order dated 26th November, 2024 and having regard thereto, there is no scope at this stage to challenge the direction issued by the learned Court to hear out the application under Section 5

of the said Act. He, however, candidly submits that the application under Section 5 of the said Act can be decided on the basis of the statements made in the application which are supported by an affidavit and for the same, no trial on evidence may be necessary. He submits that at this stage this Court should not afford any protection to the petitioner. Mr. Banerjee specially denies all allegations made in the applications and those made for the Bar.

11. Heard the learned advocates appearing for the respective parties and considered the materials on record. Though the learned Court by an order dated 5th December, 2024 had granted liberty to the petitioner to prove the statements made in the application filed under Section 5 of the said Act by submitting evidence on affidavit prior to adjudication by the Court by submitting himself to cross-examination, I am of the view, such an approach may not be necessary in the given facts especially when the application filed under Section 5 of the said Act is supported by an affidavit. It is well settled that while deciding an application under Section 5 of the said Act, the Court is required to adopt a justice oriented approach. The Court has to note whether there are lack of bona fide on the part of the petitioner. Ordinarily, in a case of this nature when an ex parte order of injunction is passed after having previously refused to pass any ex parte order, which forms the subject matter of challenge in the appeals, the Court must take note of the facts of this case, the urgency involved and proceed to hear out the application under Section 5 of the said Act as expeditiously as possible. Such a procedure is required to be adopted especially in a case where the ex parte order of injunction interferes with the day-to-day functioning of the society and on the basis of such order the concerned banks have issued debit freeze notice. In any event, since the application under Section 5 of the said Act is yet to be decided, I am of the view that it shall not be prudent at this stage, for this Court to make any further observation in this regard. Further there being no prayer for appointment of any administrator, this Court is not inclined to pass any such order at this stage.

12. Accordingly, I direct the learned District Judge, Alipore, to hear out the applications under Section 5 of the said Act positively, if necessary, by advancing the date on 8th January, 2025, followed by hearing of the stay application filed by the petitioner. The stay application shall be disposed of by the learned Judge not later than 17th January, 2025 unless the Court decides to reject the application under Section 5 of the said Act.

13. It shall be open to the learned Judge to pass interim protection if he feels necessary in the facts of the case.

14. It is made clear that the learned Court shall not grant any unnecessary adjournment to either of the parties.

15. Accordingly, the orders dated 5th December, 2024 passed in both the Misc. Appeals being Misc. Appeal Nos. 403 and 404 of 2024 stand set aside.

16. With the above observations and directions, the revisional applications stand

disposed of.

17. Urgent Photostat certified copy of this order, if applied for, be made available to the parties upon compliance with the requisite formalities.