
(2025) 11 CAL CK 1799
In the Calcutta High Court, Appellate Side
Case No : FMAT No. 321 Of 2025

Merino Properties Private Ltd	Vs	APPELLANT
Tapas Kodali and others		RESPONDENT

Date of Decision : 17-11-2025

Acts Referred:

Code of Civil Procedure, 1908 — Order 39 Rule 4, Order 41 Rule 11

Citation : (2025) 11 CAL CK 1799

Hon'ble Judges : Supratim Bhattacharya, J; Sabyasachi Bhattacharyya, J

Bench : Division Bench

Advocate : Sharanya Chatterjee, Riya Kundu

Final Decision : Dismissed

Judgement

Supratim Bhattacharya, J

1. The affidavit-of-service filed in Court today be kept on record.
2. Service has been effected on the plaintiff/principal respondent no. 1.
3. In view of the appeal being directed against the refusal of an application under Order XXXIX Rule 4 of the Code of Civil Procedure filed by the defendant no.1/ appellant, service on the other defendants/proforma respondent nos. 2 to 25 is dispensed with.
4. None appears for the plaintiff/ principal respondent no. 1 at the time of call despite service.
5. Upon a perusal of the grounds shown in the application for condonation of delay, we are satisfied that sufficient explanation for the delay in preferring the appeal has been made out insofar as the delay of about eight days is concerned.
6. Accordingly, CAN 2 of 2025 is allowed, thereby condoning the delay in preferring FMAT No. 321 of 2025.
7. There will be no order as to costs.

8. The present appeal has been preferred against an order rejecting the defendant no. 1/appellant's application

under Order 39 Rule 4 of the Code of Civil Procedure for vacating an ex parte ad interim order of status quo dated October 1, 2024 passed in a suit for partition and consequential reliefs.

9. However, as rightly pointed out by learned counsel appearing for the appellant, it transpires from the certified copy of the entire order sheet, which has been annexed along with the memorandum of the present appeal, that although by the order dated October 1, 2024, the ad interim order of status quo had been granted for a limited period till November 19, 2024, on November 19, 2024, despite an application for extension of the injunction order having been filed by the plaintiffs, no order was passed allowing the same; whereas time was granted to the defendant no.1/appellant to file written statement and written objection. From the very next order dated January 24, 2025, we find that such written statement and written objection was duly filed by the present appellant.

10. However, an application under Order XXXIX Rule 4 of the Code of Civil Procedure was also filed, although in the meantime the ad interim order had not been extended. The same was disposed of by the impugned order dated April 28, 2025.

11. Thus, in view of the above narrative, we find that the application under Order XXXIX Rule 4 of the Code of Civil Procedure was redundant ab initio since there was never any extension of the ad interim order which was sought to be vacated.

12. The question of vacation an order can only arise when such order is subsisting and in the present circumstances there was no cause of action for vacating any ad interim order as there was no subsisting injunction order at all.

13. Thus, the present appeal is academic in nature and accordingly, FMAT No. 321 of 2025 is dismissed under Order XLI Rule 11 of the Code of Civil Procedure.

14. Consequentially, CAN 1 of 2025 is disposed of as well.

15. We request the learned trial Judge to dispose of the main temporary injunction application pending in the suit as expeditiously as possible by positively taking it up on the returnable date, that is, February 26, 2026 and disposing of the same within an outer limit of three weeks thereafter.

16. Needless to say, the merits of the respective contentions of the parties in the suit or the injunction application have not been gone into by this Court and the learned trial Judge will decide both independently on their own merits without being unnecessarily influenced in any manner by any of the observations made above or in the order impugned herein.

17. There will be no order as to costs.