
(2025) 10 CAL CK 1239
In the Calcutta High Court, Appellate Side
Case No : C.O. 3756 Of 2025

Power Tools and Appliances Co Pvt. Ltd	APPELLANT
Vs	
Pinaki Roychowdhury & Ors	RESPONDENT

Date of Decision : 16-10-2025

Acts Referred:

Constitution of India, 1950 — Article 227
Companies Act, 2013 — Section 241, 242, 244, 430

Citation : (2025) 10 CAL CK 1239

Hon'ble Judges : Aniruddha Roy, J

Bench : Single Bench

Advocate : Ratnanko Banerjee, Anirban Ray, Kanishk Kejriwal, Saubhik Chowdhury, Sayantani Banerjee, Shaunak Mitra, Suchissatewa Mallick, Abhrajit Mitra, Shounak Mukherjee, Paritosh Sinha, Jishnu Saha, Jay Saha, Aniruddha Chatterjee, Jishnu Chowdhury, Arkaprava Sen, Aditi Kumar, Sayantan Kar, Sounak Chatterjee, Suchisatewa Mallick, Jay Saha, Aniruddha Chatterjee, Jishnu Chowdhury, Arkaprava Sen, Aditi Kumar, Sayantan Kar, Sounak Chatterjee, Ratnanko Banerjee, Anirban Ray, Kanishk Kejriwal, Saubhik Chowdhury, Sayantani Banerjee, Abhrajit Mitra, Shounak Mukherjee, Paritosh Sinha

Final Decision : Allowed

Judgement

Aniruddha Roy, J

1. Mr. Jishnu Saha, learned senior counsel appears for the plaintiff/opposite party in C.O. 3767 of 2025.
2. Mr. Jay Saha, learned counsel appears for the plaintiff/opposite party in C.O. 3767 of 2025.
3. Both being the plaintiffs in these two applications filed under Article 227 of the Constitution of India submit that both these applications arose from the same impugned order passed
by the civil court in the same civil suit.

4. Opposite parties are also represented by various learned counsel namely, Abhrajit Mitra, Sr. Adv., Mr. Shaunak Mitra, Adv., Mr. Anirban Ray, Sr. adv., led by Mr. Ratnanko Banerjee, Sr. Adv. (VC), Mr. Aniruddha Chatterjee, Sr. Adv. and Mr. Jishnu Chowdhury, Sr. Adv.

5. All the learned advocates and the respective parties have agreed that both these applications can be taken up together and can be considered by a single composite order.

6. Hence both the applications are taken up together for consideration.

7. These are applications under Article 227 of the Constitution of India wherein an ex parte ad interim order dated September 25, 2025 has been assailed passed by the learned Civil Judge, Senior Division, 1st Court, Alipore, South 24 parganas (for short Civil court).

8. The plaint filed before the civil court is available at page 31 to the instant application being annexure B thereto, the reliefs are available at pages 67. Referring to the plaint case made out by the plaintiff, Mr. Ratnanko Banerjee, learned senior counsel with Mr. Anirban Ray, learned senior counsel appearing for the petitioners in C.O. 3756 of 2025 (first revisional application) being defendant nos. 6 to 9 in the civil suit, submits that on a plain reading of the averments in the plaint, it appears that a shareholder action has been converted into a civil suit, despite there being specific statutory provisions and remedies under Sections 241, 242 and 244 of the Companies Act (for short Companies Act). Section 430 of the Companies Act provides for an exclusive jurisdiction before the jurisdictional NCLT and the said provision also bars filing of civil suit and passing an order of injunction in such an action.

9. Leaned senior counsel in the light of above, submits that civil suit filed before the civil court being barred by law the ad interim ex parte order should not have been passed and as such, the same is not only illegal and wrongful but also without jurisdiction.

10. Learned senior counsel for the petitioner submits that since it was ad interim order of ex parte injunction and the same was moved behind the back of the petitioner, the petitioner could not have the opportunity to urge the jurisdictional issue before the civil court with regard to the maintainability of the civil suit.

11. The second plea taken by the petitioner referring to the impugned ad interim ex parte order that the same is a grossly non-speaking order and no reasons have been ascribed thereto as to why the civil court has drastically passed the ad interim ex parte order as will be evident of the said impugned order. A non speaking order is a nullity.

12. Mr. Banerjee, then submits that since the appellate forum before the civil court is not available during the vacation and since there is a gross jurisdictional error on the face of the order impugned, the petitioners have applied before this

court invoking Article 227 of the constitution of India. If the impugned order is a nullity and without jurisdiction and suffers from gross irregularity and infirmity, which is apparent on the face of it, straightway an application under Article 227 is maintainable.

13. In support, learned counsel for the petitioner has relied upon the following decisions:

a) In the matter of : Shashi Prakash Kehmka (Dead) through legal representatives and another Vs. NEPC Micon (now NEPC India Limited) and others reported at (2019) 18 SCC 569

b) In the matter of : Atin Arora Vs. Oriental Bank of Commerce reported at (2021) 15 Comp es 314.

14. Mr. Banerjee, learned senior counsel then referring to the averments made in the plaint submits that the plaintiff has raised the case of alleged fraud against the defendants before the civil court. Mr. Banerjee submits that the jurisdictional NCLT has ample authority to consider fraud while adjudicating a shareholder action made out in the plaint. In support, he has relied upon a decision of the Hon'ble Supreme Court In the matter of: Shailja Kirshna Vs. Satori Global Limited and others reported at 2025 SCC Online SC 1889.

15. Mr. Shanak Mitra, learned counsel for the opposite party no. 2 to 6 in the first revisional application being the defendant no. 1 to 5 in the civil suit has adopted the submissions made by Mr. Banerjee, learned senior advocate. In addition, he submits that Section 430 of the Companies Act clearly also bars to pass the order of injunction by a civil court. He further submits that the petitioner has already stepped down from the management of the company in the year 2008. Referring to the averments in the injunction application annexed to the petition, he submits that the order impugned is verbatim reproduction of the prayers but without any reason as to why the prayers have been allowed at an ex parte ad interim stage.

16. Mr. Abhrajit Mitra, learned senior counsel appearing for the opposite party no. 7 in the first revisional application being defendant nos. 10 in the civil suit submits that the company has entered into a development agreement with his client touching the land of the company way back of January 5, 2023 which is available at page 268 to the plaint. He submits that all along the petitioners were aware of the execution of the said development agreement since its execution. Further, Mr. Mitra has also adopted the legal submissions made on behalf of the petitioner.

17. The petitioners in this revisional application accordingly pray for setting aside and quashing of the said impugned ad interim ex parte order of injunction dated September, 25, 2025.

18. Mr. Jisnu Saha, learned senior advocate appearing for the opposite party no. 1 in the first revisional application being the plaintiff in the suit submits that the

order impugned passed is an appealable order and not revisable under Article 227 of the Constitution of India. Appellate court is available but still the petitioners chose not to move this jurisdictional appellate court and applied under Article 227 of the Constitution of India. The revisional application is therefore not maintainable.

19. Mr. Jisnu Saha, learned senior advocate refers to the averments made in the revisional application and submits that only paragraph 26 thereof deals with an alleged urgency but the same does not show whether the petitioner had applied before the appellate authority or made any attempt to prefer the appeal when an alternative remedy is available. The law is well settled that the application under Article 227 of the Constitution of India is not maintainable without invoking the appellate forum.

20. Referring to the plaint in detail and the averments made therein, Mr. Saha learned Senior counsel submits that the plaintiff is one of the brothers, has filed the plaint against the other brothers. The specific case of the plaintiff is by virtue of practicing fraud, the shareholding of the plaintiff in the subject company namely, Power Tool has been reduced in an illegal and wrongful manner and thereby the plaintiff has been thrown out from the control, management and affairs of the company. The nature of fraud, as alleged in the plaint, is such the same cannot be adjudicated by the NCLT and it is the civil court who is to adjudicate. In support, Mr. Saha has relied upon the following decisions:-

a) In the matter of : Aruna Oswal Vs. Pankaj Oswal and others reported in (2020) 8 SCC 79

b) In the matter of : Santosh Kumar Agarwala and others Vs. Sajjan Kumar Agarwala and others reported in 2024 SCC Online Cal 11480

c) In the matter of : Phool Chand Gupta and others Vs. Mukesh Jaiswal and others reported in (2024) 249 Comp Cas 185

d) In the matter of: IFB Agro Industries Limited Vs. Sicgil India Limited and others reported in (2023) 4 SCC 209

21. Mr. Jishu Saha, learned senior counsel further submits that since NCLT is not permitted to look into the fraud alleged by the plaintiff, the civil court is the jurisdictional forum to try and adjudicate upon the pending civil suit. Therefore, the civil court does not lack jurisdiction inherently and unless there is an inherent lack of jurisdiction of a forum, which has passed the impugned order, Article 227 of the Constitution of India cannot be invoked when there is an available appellate forum.

22. Mr. Jisnu Saha further submits that sufficient reasons are there in the order impugned. The order records the finding of the court on the basis whereof the ad interim order of injunction was passed. He then submits that even if this court finds that sufficient reasons are not there, the law is well settled that, the appellate court can supplant the reasons if the appellate court comes to a finding

that the conclusion in the order is otherwise correct on the basis of the materials available on record. Mr. Saha then refers the prayers (c), (d), (h) and (e) from the plaint and submits that these prayers cannot be considered by NCLT. He further submits that, even if reasons are not at all there in the order impugned, this does not make an order revisable which is otherwise appealable under the law. In support, he has relied upon a decision In the matter of: Arpee Properties Pvt. Ltd. Vs. United Bank of India and others reported at AIR 1987 Cal 60.

23. He also submits that if the reasons are not there in the order impugned, there is no fault or latches on the part of the litigant for which the litigant should suffer. Lastly, Mr. Saha learned senior counsel submits that by passing an ad interim order, be it ex parte or not, the averments in the plaint to be taken as correct on the basis whereof an ad interim order shall be passed and has also been passed in the instant case. In support, he has relied upon a decision In the matter of: Sm. Muktakesi Dawn and others Vs. Haripada Mazumdar and another reported at AIR 1988 Cal 25.

24. Mr. Jay Saha, learned senior advocate appearing for the opposite party no. 1 in C.O. 3767 of 2025 (for short the second revisional application) has adopted the entire submissions made by Mr. Jisnu Saha, learned senior advocate and in addition he has added that there is no compelling circumstances which led the petitioners to file the instant revisional applications by invoking jurisdiction of the court under Article 227 of the Constitution of India.

Decision:

25. After considering the rival contentions of the parties and upon perusal of the materials on record this Court, at the outset, reiterates the settled law in exercising its power under Article 227 of the Constitution of India. The power conferred upon this Court by the Constitution is the power of superintendence over all Courts, in its territory, by the concerned High Court. Alternative remedy is not an absolute bar but it is a self-imposed restriction. If this Constitutional Court in exercise of its power under Article 227 of the Constitution finds that the jurisdictional error is ex-facie apparent on the impugned order and if such a jurisdictional error affects the rights of the parties by virtue of the impugned order, this Constitutional Court has plenary power and ample jurisdiction to intervene and the available alternative remedy in that case will not be an absolute restraint.

26. The issue raised by the petitioner questioning the maintainability of the civil suit that the civil suit is basically a shareholder's action and NCLT should be the appropriate jurisdictional authority to try it, is a mixed question of law and facts. Admittedly, the impugned order was passed ex parte. As such, the defendants in the civil suit did not have opportunity to raise the issue of maintainability before the Civil Court.

27. On a plain reading of the order impugned, it ex facie appears that the order does not disclose any reason which had prompted the Civil Court to pass it. On a

careful scrutiny of the order impugned it appears that the learned Civil Court has recorded the plaint case and the submissions of the plaintiff. The learned Court has recorded that various documents relied upon by the plaintiff to show a prima facie case along with several incidents. On a plain reading of the order it appears that all those incidents alleged to have taken place since 2010 and thereafter up to 2023 till execution of the development agreement dated January 5, 2023. The order further shows that the plaintiff has relied upon an alleged certificate issued under Urban Land ceiling, which was a result of an application under the RTI Act in July, 2025. The plaintiff has filed the suit on September 25, 2025, as this Court has been informed by the counsel for the plaintiff. The order also records the documents filed by the plaintiff, according to plaintiff shows fraudulent property transaction as well as misuse of industrial land, siphoning of fund which have necessitated the Civil Court to pass the said ex parte ad interim order but no reason has been there which has led the learned Civil Judge to come to a finding that why the said ex parte ad interim order was warranted to be passed. No justification in support of any prima facie case with reason has been made in the impugned order. A mechanical approach was adopted which is full of procedural infirmity.

28. The law is well settled that reason is the very life of law. when the reason of a law once ceases, the law itself generally ceases. Such is the significance of reasoning in any rule of law. By practice adopted in all Courts and by virtue of judge-ment law, the concept of reasoned judgment or order has become an indispensable part of basic rule of law and in fact is a mandatory requirement of the procedural law. Clarity of thoughts leads to clarity of vision and proper reasoning is the foundation a just and fair decision.

29. In the light of the law settled above, this Court is of the firm and considered view that the impugned ex party ad interim order dated September 25, 2025 is devoid of any reason and is not sustainable in law.

30. Accordingly, the said ex parte ad interim order dated September 25, 2025 stands set aside and quashed.

31. The application has already been fixed before the learned Civil Judge on October 31, 2025, when the Civil Court shall hear the injunction application upon notice to the respondents therein and the Civil Court shall be free to proceed in accordance with law with the hearing.

32. It is made clear that, this Court has not gone into point of maintainability of the civil suit and such point of maintainability raised by the petitioners before this Court are kept open and the same shall be heard at the threshold.

33. It is further made clear that, this Court has not gone into the merits of the suit or the injunction application and the rival contentions of the parties and the parties shall be at liberty to urge all their respective points before the Civil Court.

34. In view of the forgoing reasons and discussions both the revisional

applications being CO 3756 of 2025 and CO 3767 of 2025 stand allowed, without any order as to costs.

35. Parties shall act on the basis of the server copy of this order, duly downloaded from the official website of this court.