

(1984) 11 CAL CK 0028
In the Calcutta High Court
Case No : Appeal No. 162 of 1984

Tridandi Swami Bhakti Kusum Shraman Maharaj and Another	APPELLANT
Vs	
Mayapur Srichaitanya Math and Others	RESPONDENT

Date of Decision : 14-11-1984

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 1, Order 39 Rule 2, 92

Citation : AIR 1985 Cal 176 : 89 CWN 493

Hon'ble Judges : S.K. Mookherjee, J;B.C. Roy, J

Bench : Division Bench

Advocate : Bhabra, for the Appellant; Rathin Nag, for the Respondent

Judgement

B.C. Ray, J.—This is an application for stay of operation of the order made on 17th May, 1984 by Mrs. Khastgir, J. as well as stay of all further proceedings in the application for transfer filed under Clause 13 of the Letters Patent read with Section 24 of the CPC being Matter No. 490 of 1983 pending the hearing of the appeal. The appeal was filed against the said order dated May 17, 1984 whereby the respondents were restrained by an order of injunction from giving effect to the purported two deeds dated 7th July, 1976 and/or acting as shebait under the said deeds in respect of the said properties No. 70B, Rash Behari Avenue, Calcutta or the property at Mayapur Srichaitanya Math situate at Mayapur. There was a further order restraining the respondents from having their names mutated in the records of the settlement department and also restraining them from filing up the disputed vacancy caused by the death of the shebait. In the meantime the respondents were also directed under order of this Court to carry out daily seva puja only. There was also an order of injunction restraining the petitioner also from having their names mutated with the records of the settlement department till further order of the Court.

2. The respondent No. 1 and its office bearers respondents Nos. 2 to 11 instituted a suit in this Hon'ble Court being Suit No. 939 of 1978 against the appellants and the respondents Nos. 12, 13 and 14 claiming the following reliefs.

(A) A declaration that the plaintiffs Nos. 2 to 11 and the defendants Nos. 7 to 11 are the only members of the lawfully constituted governing body of the plaintiff No. 1 and as such are solely and exclusively entitled to remain in control, possession, custody, management and administration of plaintiff No. 1 and of its temples, maths, lands and buildings and other properties and affairs including the said Srichaitanya Research Institute if necessary. (B) A further declaration that the defendant Nos. 1 to 6 have no right, title or interest either in respect of the plaintiff No. 1 or its temples or maths or lands or buildings or any other assets or affairs of the said Srichaitanya Research Institute and have no right to manage, administer, control the same. (C) A permanent injunction restraining the defendants Nos. 1 to 6, their servants and agents from interfering in any way with the rights, powers and functions of the governing body of plaintiff No. 1 in connection with the management, control, administration, custody and possession of plaintiff No. 1 and its temple, maths, lands and buildings, properties assets etc. including the said Srichaitanya Research Institute, in any way interfere with the daily seva puja and periodic festival of Sri Gour Sundar Daitya Kunja Jew located at No. 70B, Rash Behari Avenue, Calcutta-26, from selling, letting out, encumbering, making any new construction or in any manner dealing with the property assets, lands, buildings and funds of the said Debutter estate including those of Mayapur Srichaitanya Math and Srichaitanya Research Institute as well as for other reliefs. In the said suit the plaintiffs made an application for appointment of Receiver and injunction and obtained an interim order of injunction in terms of prayers 2 and 3 of the said notice of motions. The said application came up for hearing before Mrs. Padma Khastgir, J. on 27th Jan. 1979. The learned Judge after hearing the learned Advocates for both the appearing parties passed the following order.

"Mr. Chatterjee's clients will produce the original deeds dated 7th July, 1976 to be kept under the safe custody of the Registrar O.S. till further order of this Court. Both the parties are given liberty to take out an application for the purpose of examination of the said documents by experts.

There will be an order of injunction restraining the respondents from in any way dealing with or disposing of the properties belonging to the said math save and except in the usual course of performing the seva puja. Mr. Chatterjee's client will keep a separate account of daily offerings in respect of the said math and should also keep a separate account of the sale of the books and photographs. Mr. Banerjee's client is given liberty to take out an application for forming a board of management on proper materials. All other interim orders are vacated."

Thereafter, the defendants who are the appellants in the instant appeal made an application for revocation of leave granted under Clause 12 of the Letters Patent u/s 92 of the CPC on the ground that no part of the suit properties was situated within the jurisdiction of this Hon'ble Court. This application after hearing was rejected by the learned Judge by an order dated 11th Dec. 1979. Against that order an appeal was preferred being Appeal No. 453 of 1979. The said appeal

came up for hearing before the Appeal Bench and their lordship the Hon''ble Mr. Justice M.M. Dutt and Hon''ble Mr. Justice Monoj Kumar Mukherjee after hearing were pleased to make an order on 22nd April, 1983 whereby the said appeal was allowed and the leave was revoked holding that this Court had no jurisdiction to try and entertain the said suit being No. 939 of 1978. Their Lordship further directed to return the plaint to the advocate on record of the plaintiffs for presentation in proper Court. On 3rd June, 1983 respondents Nos. 1 to 11 presented the plaint before the 9th Subordinate Judge at Alipore and this was registered as Title Suit No. 60 of 1983. On 4th June, 1983 an application was made in the said suit by the plaintiff for the following reliefs, (a) An injunction be issued restraining the respondents Nos. 1 to 6 and their servants and agents from :

(i) Interfering in any way with the rights, powers and functions of the said Governing Body of the petitioner No. 1 and the petitioners in connection with the management, control, administration, custody and possession of the petitioners, assets and affairs and affairs including the said Srichaitanya Research Institute;

(ii) In any way interfering with the daily seva puja and the periodic festivals of the deities Sri Sri Guru Gauranga Gandharbika and Giri Dhari Jew;

(iii) In any way interfering with the daily seva puja and the periodic festivals or the deities Sri Guru Sri Gour Sundar Sri Radha Dayita Kunja Behari Jew located at No. 70B, Rash Behari Avenue, Calcutta-26.

(iv) Selling, letting out, encumbering or in any manner dealing with any of the properties, assets, lands, buildings and funds of the said Debutter Estate including those of Mayapur Srichaitanya Math and Sri Chaitanya Research Institute;

(v) An injunction be issued restraining the respondents Nos. 1 to 6 and each of them and their servants and agents from claiming or usurping the office of Shebait or any other right or title or interest by virtue of or under or in terms of the alleged two Deeds of Appointment both dated the 7th July, 1976.

(c) A further injunction in such other terms and to such other effect as may be deemed necessary in the facts and circumstances of this case.

(d) Ad-interim orders in terms of the above prayers.

(e) Such further or other order or orders be made and directions be given including the direction as to costs of this application as may be deemed fit and proper.

On hearing the learned Advocate for the plaintiff the learned Subordinate Judge directed the defendants Nos. 1 to 6 to show cause within the seven days from the date of receipt of the notice why the application for temporary injunction will not be allowed and passed an ad interim order of injunction restraining the defendants 1 to 6 from dealing with or disposing of the properties of the suit

belonging to Sri Chaitanya Math seva and except in the usual course of performing the seva puja until further orders. Defendants 1 to 6 were further restrained from taking the original documents, that is, the two deeds of appointment dated 7th July, 1966, (1) one letter written by S. Brahmachari, defendant No. 3 to Sajjan Maharaj, defendant No. 4, dated 14th Sep. 1976 and original forensic report of Forensic Research Laboratory from the custody of the learned Registrar, O.S. Calcutta, High Court, Calcutta till further order. The application was fixed for hearing on 4th July, 1983. It appears from the order, annexed as Annexure "B" to the instant application for interim order filed in the appeal that after the defendants filed their affidavit-in-opposition to the petition under Order 39 Rule 1 and 2 of the CPC the plaintiffs took adjournments on several occasions as will be evident from the order No. 13 dated 6th Feb. 1984, order No. 14 dated 14th Sep. 1984, order No. 15 dated 19th March, 1984, order No. 17 dated 3rd May, 1984. and as such the said application for temporary injunction could not be finally heard by the learned subordinate Judge at Alipore. In the meantime on 7th May, 1984 the plaintiff filed an application under Clause 13 of the Letters Patent for transfer of the said Alipore suit to this Hon'ble Court. The said application was heard by R. N. Pyne, J. who was pleased to issue a Rule and make an ad interim order directing stay of all further proceedings of Title Suit No. 60 of 1983. The Rule was made returnable on 17th May, 1984. The said Rule was served only on the petitioners. The Rule, it was stated, was never served on respondent Nos. 12, 13 and 14. On the returnable date, that is, on 17th May, 1984 the application appeared in the list before her Lordship Hon'ble Mrs. Justice Padma Khastgir and her Lordship was pleased to make further interim order as stated hereinbefore. It is against the said order passed by Her Lordship on 17th May, 1984 that the instant appeal has been filed.

3. Before proceeding to consider the merits of the contentions raised on behalf of the appellants as well as of the respondents it is pertinent to state herein certain relevant facts relating to this appeal. The property viz. Sri Chaitanya Math at Mayapur was established by Prabhu Pada Sri Bhakti Siddhanta Swarasti Goswami Thakur who took Sanyas at his house of Mayapur and installed the deities Sri Guru Gouranga Gondharbika Giridhari Jew in his house which is later named Sri Chaitanya Math and appointed his three disciples viz. Kunja Behari Bidya Bhusan, Pramananda Bidya Ratna and Ananta Basudev Brahmachari as shebaites of the deities of the said Math. In 1925 Prabhu Pada executed his will appointing his aforesaid three disciples as executors to carry out the seva puja of the said deities and to maintain his maths and temples. On 1st Jan. 1937 Prabhu Pada expired. In a suit instituted by Kunja Behari, the trust was declared to be a public charitable trust by order dated 23rd May, 1938. On 25th April, 1940 the will was probated. Thereafter there were dissensions between the shebaites Kunja Behari Bidya Bhusan and Pramananda Bidya Ratna on the one side and the Ananta Basudev Brahmachari on the other side covering the management Ananta Basudev Brahmachari and his disciples and Supporters registered a society named "Vandiy Mission" (Gaudiya Mission?) and they claimed all Debuttar

properties as belonging to the society thereby denying the right, title and interest of the shebait and executors Kunja Behari Bidya Bhusan and Pramananda Bidya Ratna. In 1940 suit No. 2159 of 1940 was filed by the executors Kunja Behari Bidya Bhusan and Pramananda Bidya Ratna against Ananta Basudev Brahmachari for possession of the trust property and for a declaration that Gaudiya Mission had no right or interest therein. The said suit was filed in the Original Side of this Court after obtaining leave under Clause 12 of the Letters Patent. On 17th Feb. 1948 a consent decree was made whereby the properties in Part I of the Schedule to the said decree, that is, Sri Chaitanya Math situate at Mayapur and other maths and temples and also properties mentioned in the said schedule were declared Debuttar properties and plaintiffs Kunja Behari Bidya Bhusan and Pramananda Bidya Ratna were declared entitled to manage the said debuttar properties as shebait. The Bagbazar Gaudiya Math along with some other properties were allotted to Gaudiya Mission Society. On 26th March, 1940, that is, on Falguni Purnima day, Kunja Behari Bidya Bhusan took Sanyas and assumed name of Sri Bhakti Bilas Tirtha Maharaj. According to the defendants on 7th July 1976 Bhakti Bilas Tirtha Maharaj executed two deeds of appointments of shebait one in respect of Sri Chaitanya Math situate at Mayapur and its branch maths and the other in respect of Sri Chaitanya Research Institute at 70B, Rash Behari Avenue, Calcutta established in 1964. By one of the said two deeds eight persons named therein were appointed shebait of Sri Chaitanya Math and its branch maths and the debuttar properties whereas by the other deed five persons, named therein, were appointed as shebait of Sri Chaitanya Research Institute at 70B, Rash Behari Avenue and certain other maths. The said deed however was registered in Oct. 1976 by Satchidananda Brahmachari, the defendant appellant No. 2, as Bhakti Bilas died on 7th of Sept. 1976. In June, 1978 the plaintiffs respondents gave out that they formed a society named Mayapur Sri Chaitanya Math. On 15th May 1978 the respondent Nos. 2 to 11, who are office bearers of the said society filed said suit No. 939 of 1978 claiming the reliefs mentioned hereinbefore.

4. Mr. Bhabra learned Advocate appearing on behalf of the appellants has submitted, in the first place, that 17th May 1983 was the date fixed for showing cause why the Alipore suit should not be transferred to this Hon'ble Court. Under Rule 5 and 6 of Chapter 20 of the Original Side Rules of this Hon'ble Court, on the returnable date the parties appear and show cause. Thereafter time is granted for filing affidavits-in-reply and then Rule is fixed for hearing on a later date. It has also been submitted by Mr. Bhabra that on the returnable date the respondent/opposite party instead of showing cause may appear and pray for time for filing affidavit and time is granted for filing affidavit in counter and also affidavits-in-reply. After the affidavits are complete a date is fixed for hearing of the Rule, that is, whether the suit, which was pending before the Court of the 9th Subordinate Judge at Alipore, should be transferred to this Hon'ble Court. It has been further submitted, in this connection, by Mr. Bhabra that the further interim order made by this Hon'ble Court on the returnable date is wholly unwarranted

and without jurisdiction and as such the said order is void and the same is liable to be quashed. Mr. Bhabra in support of this submission has referred to the decision in *Official Trustee, West Bengal and Others Vs. Sachindra Nath Chatterjee and Another*, and submitted that the impugned order made by the learned Judge is wholly void and bad. It has been made without jurisdiction and/or authority to pass the order. It has been further submitted by Mr. Bhabra that the meaning of the word Rule in Black's Law Dictionary 5th Edition at Page 1195 is "to command or require by a Rule of Court; to rule the defendant to plead, to Rule against an objection to evidence etc. It has, therefore, been submitted that the Rule was issued to show cause why the Alipore suit should not be transferred or in other words to show case why the opposite party should not be compelled to do and/or require or why object of the rule should not be enforced. In Black's Dictionary at page 1237 show cause order means an order/decreed to appear as directed and present to the court such reasons and considerations as one has to offer why a particular order/decreed etc. should not be confirmed, take effect, be executed or as the case may be, an order to a person or Corporation to appear in Court and explain why the Court should not take a proposed action. It has been submitted by Mr. Bhabra that, at best, after the cause is shown by the party the only order that can be made is whether the suit should be transferred or not and nothing else. Reference has also been made in this connection to a decision in ILR 21 Calcutta 213 (sic). It has been next submitted by Mr. Bhabra that the further interim order as made by the impugned order purports to grant the entire relief claimed in the said suit which is not permissible under the law. Some decisions have been cited at the bar on this point. It has been next submitted by Mr. Bhabra that the prayer for further interim order can only be made in connection with an application of transfer and such order which is in aid of the transfer order and not any other interim order can be passed. The impugned order cannot be made by the learned Judge as it is not one in aid of the relief claimed in the application for transfer. The order is, therefore, unwarranted and bad. It has been further submitted by Mr. Bhabra that the impugned order made on 17th May, 1984 is a judgment within the meaning of Clause 15 of the Letters Patent as it affects the rights of the parties and also it involves jurisdiction. Therefore, the said order is appealable and the instant appeal is maintainable. In support of this submission several decisions have been cited at the bar by Mr. Bhabra. It has been next submitted that the application for transfer made by the plaintiffs respondents is an abuse of the process of the Court inasmuch as the previous suit No. 939 of 1978 was directed to be withdrawn and the plaint was returned by the Appeal bench of this Court on revoking the leave granted under Clause 12 of the Letters Patent as well as u/s 92 of the CPC permitting the plaintiff to re-file the plaint in the proper Court. The plaint was accordingly filed by the plaintiffs in the 9th Court of the Subordinate Judge at Alipore and the same was registered as Title Suit No. 60 of 1983. An application for interim order was made by the plaintiffs and an ex parte order of injunction restraining the respondents from dealing with or disposing of the debuttar properties belonging to the Srichaitanya Math at Mayapur and other properties including the

Srichaitanya Research Institute at 70B, Rash Behari Avenue, Calcutta except in the usual course of the daily seva pujas of the deities installed therein was made. In connection with the said interlocutory application the defendant appellants were directed to show cause and cause was shown by the defendants. But it was the plaintiffs at whose instance the hearing of the said application was adjourned on several occasions and in the meantime instant application has been filed for transfer of the suit from the Alipore Court to this Hon"ble Court and a prayer for interim order was made in the said application. There was an ex parte interim order made by this Hon"ble Court staying all further proceedings in the Alipore Suit and the Rule was made returnable on 17th May 1984 when the impugned order had been made. It has, therefore, been submitted that to frustrate and nullify the order passed by the Appeal Bench of this Court the instant application for transfer of the said suit has been made before this Court when the plaintiffs have not even taken any steps for effecting the service of the summons on the respondents and also for hearing of the interlocutory application wherein aforesaid ex parte interim order was made. It has also been submitted in this connection by Mr. Bhabra that the further interim order that was made by this Hon"ble Court on the returnable date, that is, on 17th May 1984, is beyond the prayers contained in the application for transfer and this interim order is not in aid of the final relief claimed in the said application for transfer and as such the interim order is wholly bad and without jurisdiction and it is liable to be quashed and cancelled. It has been lastly submitted by Mr. Bhabra that in connection with an application for transfer under Clause 13 of the Letters Patent the Court may pass an ancillary order but the impugned order that has been made on 17th May 1984 by this Hon"ble Court is not an ancillary order as the relief claimed in the application is for transfer of the Alipore Suit to this Hon"ble Court and already a stay of all further proceedings in the Alipore Suit pending the hearing of the said application for transfer has been granted by Pyne J. In these circumstances, it has been submitted that the order in question is wholly without jurisdiction and hence it is void. It has been lastly submitted by Mr. Bhabra that the power to grant interim order is undoubtedly a discretionary jurisdiction of the Court but the discretion has to be exercised reasonably, fairly and to promote ends of justice and not arbitrarily and capriciously. In this case, it has been submitted that the discretion has not been exercised fairly, judicially but has been exercised arbitrarily, unreasonably and capriciously ignoring the relevant norms for exercise of the discretion by the learned Trial Judge. In such circumstances the Appeal Bench of this Court is quite competent to interfere with the learned Trial Judge's exercise of discretion and to cancel or set aside and/or modify the order made by the learned trial Judge in exercise of his discretion. Reference has been made in this connection to the decision in *The Printers (Mysore) Private Ltd. Vs. Pothan Joseph*, . It has been also submitted in this connection that the Rule is not ready as regard service inasmuch as the Rule has not been served on the respondents Nos. 12, 13 and 14 as such the hearing of the Rule on the returnable date and the making of further interim order and treating the Rule as part heard is wholly illegal, bad and unwarranted.

5. Mr. Rathin Nag learned Advocate appearing on behalf of the respondents Nos. 1 to 11 submitted in the first place that the impugned order being not a judgment within the meaning of Clause 15 of the Letters Patent, the instant appeal is not maintainable and the same is liable to be dismissed in limine. It has been submitted in this connection that the appeal has been filed against an ancillary order passed in connection with the application for transfer. This order does not decide the rights of the parties either finally or in a preliminary manner so far as that court is concerned and as such it is not a judgment within the meaning of Clause 15 of the Letters Patent. In support of this submission the decision in AIR 1920 Cal 797(2) corresponding to ILR 47 Cal 1104 has been cited. It has been next submitted by Mr. Nag that the Court has jurisdiction to pass ancillary order in connection with an application for transfer. Reference has been made in this connection to the decision in ILR 47 Cal 1104 (AIR 1920 Cal 797(2)). It has been submitted that the further interim order made on 17th May 1984 by Her Lordship Khastgir J. is an ancillary order inasmuch as if the said order had not been made the application would have been infructuous. It has been next submitted that the said order even if it is without jurisdiction still it is not appealable as it is an ancillary order to the main relief sought in the application for transfer. It has been submitted by Mr. Nag that the two deeds dated 7th July 1976 alleged to have been executed by Bhakti Bilas Tritha Maharaj appointing shebait in respect of the Srichaitanya Math at Mayapur and its branch Maths and the properties belonging to the Maths as well as Srichaitanya Research Institute at 70B, Rash Behari Avenue are not genuine but forged and manufactured for the purpose by Satchidananda Brahmachari, the appellant respondent No. 2 in order to grab the property and also the letter of the appellant No. 2 Satchidananda Brahmachari to Sajjan Maharaj dated 17th Sept. 1976 would go to prove that the said deeds are fake. This serious question cannot be properly and effectively decided by the Court below particularly because the allegation is against a practising Solicitor and Advocate of this Hon'ble Court and the decision or determination of this controversy involves difficult questions of law and fact and as such the application for transfer has been made. It has been further submitted by Mr. Nag in this connection that unusual delay has been made in hearing the interlocutory application in the Alipore Court and as service of the summons of the suit had not been complete though about a year has passed by, there is every possibility that the suit will not be heard within a reasonable period of time. For all these reasons this application for transfer has been made to this Hon'ble Court for transfer of the Alipore suit to this Hon'ble Court. It has been further submitted in this connection that the further interim order made on 17th May, 1984 by Khastgir J. was necessary in view of the urgency and the said interim order was also made restraining both the petitioners and the respondents from getting their names mutated in the record of rights in respect of the debutter properties of the said Srichaitanya Math at Mayapur and its branch maths as well as Srichaitanya Research Institute at Rash Behari Avenue. It has been further submitted that this ancillary order is in aid of the final relief claimed in the application for transfer and as such this

court should not interfere with the said order and the appeal should be dismissed. It has been further submitted that the learned Judge passing the impugned interim order directed filing of all the affidavits by 18th June and the matter was adjourned to 19th June when it will come up for hearing. The filing of this appeal delayed the hearing of the said Rule. In these circumstances it has been submitted that the instant appeal should be dismissed and directions may be given for expeditious hearing of the Rule.

6. Before considering the merits of the contentions advanced on behalf of the learned Advocates for the parties it is pertinent to consider first the preliminary objections raised on behalf of the respondents as to the maintainability of the Appeal. It has been submitted that the impugned order made on 17th May, 1984 is not appealable as it is not a judgment within the meaning of Clause 15 of the Letters Patent. It has been further submitted that the impugned order is merely an order ancillary to the order of transfer. It is not a judgment as it does not affect rights of the parties nor it has anything to do with the merits of the controversy that has arisen in the suit or application between the parties. It has, therefore, been submitted that it is not a judgment as provided in Clause 15 of the Letters Patent. The meaning of the word "judgment" in Clause 15 of the Letters Patent has not been finally settled. It depends upon the facts and circumstances of each case. In the case of *Justice of Peace for Calcutta v. Oriental Gas Co.*, (1872) 8 Beng LR 433 Sir Richard Couch C. J. observed..... "We think that the word "judgment" in Clause 15 of the Letters Patent means a decision which affects the merits of the question between the parties by determinating some rights or liability. It may be either final, or preliminary, or interlocutory, the difference between them being that a final judgment determines the whole case or suit, and a preliminary or interlocutory judgment determine only a part of it leaving other matters to be determined. It has been further observed by Couch C. J. "It is however said that this court has already put wider construction upon the word "judgment" in clause 15 by entertaining appeals in cases where the plaint has been rejected as insufficient or as showing that the claim is barred by limitation, and also in cases where orders have been made in execution. Those, however, are both within the above definition of a judgment and it by no means indicate that because we hold the order in the present case not to be appealable we should be bound to hold the same in the case referred to. For example, there is an obvious difference between an order of admission of the plaint and an order of its rejection. The former determines nothing, but is merely first step towards putting the case in a shape for determination. The latter determines finally that (case) so far as brought will not lie. The decision, therefore, is a judgment in the proper sense of the term". The definition of judgment as given by Sir Arnold C. J. in (1912) ILR 35 Mad 1 (Full Bench) is as follows : "The test seems to me, to be not what is the form of the adjudication, but what is its effect on the suit or proceedings in which it is made. If its effect, whatever its form may be, and whatever may be the nature of the application on which it is made, is to put an end to the suit or proceedings so far

as the court before which the suit or proceedings is pending is concerned, or if its effect, if it is not complied with is to put an end to the suit or proceedings, I think, the adjudication is a judgment within the meaning of the clause". A different view was taken by the Full Bench of the Rangoon High Court where Page C. J. interpreted the meaning of the judgment as used in Clause 13 of the Letters Patent of the Rangoon High Court which corresponds to the Clause 15 of the Letters Patent of the Calcutta and the Madras High Court in the following terms : "A judgment means a decree in a suit by which the rights of the parties are determined. In other words, a judgment is not what is defined in Section 2(9) of the C.P. Code as being the statement given by the judgment of the grounds of a decree or order, but is a judgment in its final and definitive sense embodying a decree. A final judgment is an adjudication which conclusively determines the rights of the parties with regard to all matters in issue in the suit, where as a preliminary or interlocutory judgment is a decree by which the right to the relief claimed in the suit is decided but under which further proceedings are necessary before a suit in its entirety can be disposed of. Save and except final and preliminary judgments thus defined, all other decisions are "orders" and they do not come within the description of judgment under the relevant clause of the Letters Patent". The above observations have been considered by the Supreme Court in the case of *Asrumati Debi Vs. Kumar Rupendra Deb Raikot and Others*, . It has been observed by B. K. Mukherjee J. as His Lordship then was, that it cannot be said according to Richard Couch C. J. that every judicial pronouncement on a right or liability between the parties is to be regarded as a judgment for in that case there would be any number of judgments in course of a suit or proceeding, each one of which could be challenged by way of appeal. The judgment must be the final pronouncement which puts an end to the proceedings so far as the court dealing with it is concerned. It certainly involves determination of some rights or liability though it may not be necessary that there must be some decisions on merits. This Hon"ble Court in the case of *Mohammed Felumeah Vs. S. Mondal and Others*, held that the modification proceedings involved the determination of the rights and liabilities of the parties in regard to the subject matter of the writ proceedings under and as a result of the injunction order, with the further question of their modification on such determination and necessary regulations or adjustment of the said rights and liabilities for and during the pendency of the writ rule, would be final for that period and would govern the parties. The modification order, therefore, amounted to a judgment within the meaning of Clause 15. This observation has been made in connection with the writ proceedings where a single judge of this Hon"ble Court granted an ex parte interim injunction in favour of the petitioner restraining the respondents from granting any cinema licence to the other party until the disposal, of the Rule with liberty to the respondent to apply to the court for its modification. On an application for vacating the said order by the respondent another learned single judge modified the said interim order by allowing the issue of temporary licence in favour of the respondent. In *Pandurang Dhoni Chougule Vs. Maruti Hari Jadhav*, observed that a plea of limitation or a

plea of res judicata is a plea of law which concerns the jurisdiction of the court which tries the proceedings. A finding on the plea in favour of the party raising them would oust the jurisdiction of the court and an erroneous decision on this plea can be said to be concerned with the question of jurisdiction. This observation of the Supreme Court has been followed in the case of Central Bank of India Ltd. v. Sri Bhagabati Hosiery Mills Ltd., (1966) 70 CWN 670 at p. 673 and it has been held by Sinha J. that a plea of res judicata which determines whether the court of the plaintiff's choice should or should not determine the point in issue affects the rights of both the plaintiff as well as the defendant, and as such, comes within the scope of Clause 15 of the Letters Patent and becomes an appealable judgment, in the case of Shri Radhey Shyam Vs. Shyam Behari Singh, a question arose whether in an application under Order 21 Rule 90 of the CPC to set aside on auction sale an order passed by the Court would be a judgment affecting the valuable rights. It was held that an order in such proceedings affected valuable rights and it was, therefore, appealable. It was further observed as follows : "In our view an order in a proceeding under Order 21 Rule 90 is a judgment inasmuch as such a proceeding raises a controversy between the parties affecting their valuable rights and the order allowing the application certainly deprives the purchaser of rights accrued to him as a result of the auction sale". Referring to all the above decisions it has been held in Shah Babulal Khimji Vs. Jayaben D. Kania and Another, by Fazal Ali J. who spoke for the Supreme Court that whenever the trial Judge decided a controversy which affects the valuable rights of one of the parties, it must be treated to be a judgment within the meaning of Letters Patent. Every interlocutory order cannot be recorded as a judgment but only those orders would be judgment which decided matters of moment or affect vital or valuable rights of the parties which work serious injustice to the party concerned. On a conspectus of those decisions there is no iota of doubt in the mind of this court that the order complained of is a judgment as it vitally affects the rights of the parties and also it affects the merits of controversy between the parties. Therefore, it is a judgment within the meaning of Clause 15 of the Letters Patent. The instant appeal, therefore, filed against the aforesaid orders is, in our view, maintainable. The decision in AIR 1920 Cal 797 (2) at 798 by Sri Ashutosh Mukherjee, Acting C. J. in the case of Khatizan v. Sonairam Daulatram is not applicable as the facts are different. In that case it was held that an order made under Clause 13 of the Letters Patent is not a judgment within the meaning of Clause 15 of the Letters Patent and hence it is not appealable. In the instant case the application for transfer under Clause 13 of the Letters Patent is yet to be decided and the appeal is preferred only against further interlocutory order made on the returnable date by Her Lordship Khastgir, J. affecting the merits of the controversy between the parties and also affecting the valuable rights of the parties. Similarly the decision in Chittaranjan Mukherji Vs. Barhoo Mahto, is also not applicable to the instant case.

7. Inasmuch as in the said case it was held that an order of transfer of a suit made under Clause 13 of the Letters Patent was not a judgment within the

meaning of Clause 15 of the Letters Patent and so it was not appealable. The next question that requires consideration is whether the impugned order granting further interim order on the returnable date is a valid or proper order within jurisdiction. The Plaintiff respondents on the basis of the order made by the appeal bench of this Hon''ble Court revoking leave granted under Clause 12 of the Letters Patent read with Section 92 of the CPC and directing the filing of the suit in the proper Court after returning the plaint refiled the suit in the Court of the 9th Subordinate Judge at Alipore on 3rd June, 1983 and it was registered as Title Suit No. 60 of 1983. It also appears that on the next day an application for interim order moved by the petitioner in the said suit was heard ex parte and an ad interim order was made to the effect that due to urgency plaintiffs prayer for interim injunction was allowed in a modified form. The defendants 1 to 6 were restrained from dealing with or disposing of the property in the suit belonging to Sri Chaitanya Math save and except in the usual course of performing seva puja till further order. The defendants 1 to 6 were further restrained from taking the original documents and two deeds of appointment dated 7th July, 1976, one letter from S. Brahmachari, defendant No. 3, to T.S.B.K. Sajjan Maharaj, defendant No. 4, dated 14th Sept. 1976 and original forensic report by Forensic Laboratory from the custody of the learned Registrar, O. S. the Hon''ble High Court till further order. The court fixed 4th July, 1983 for return and order. It appears that the defendant No. 2 filed an affidavit-in-opposition to the said petition under Order 39, Rule 1 and 2 of the CPC as evident from order No. 13 dated 6th Feb. 1984. It also appears from order Nos. 14 to 17 that the plaintiffs took time on several occasions from 6th Feb. 1984 to 3rd May, 1984 for taking steps. In the meantime the plaintiffs moved an application for transfer of the said Alipore Suit under Clause 13 of the Letters Patent read with Section 24 of the CPC on 7th May, 1984 before R. N. Pyne J. who was pleased to issue a Rule and to make an ad interim order directing stay of Alipore Suit and all proceedings thereunder. The rule was made returnable on 17th May, 1984. On the returnable date, that is, on 17th May, 1984 the application appeared in the list of her Lordship the Hon''ble Mrs. Justice Padma Khastgir who was pleased to make the impugned interim order in terms of prayer C of the application for transfer to the extent that there will be an order of injunction restraining the respondents and each one of them from giving effect to the two purported deeds dated 7th July, 1976 and/or acting as shebait under the said deeds in respect of the said properties at 70B, Rash Behari Avenue, Calcutta or the properties at Mayapur Srichaitanya Math situate at Mayapur. There would be further order restraining the respondents from having their names mutated with the records of the settlement department and also restraining them from filling up the disputed vacancies caused by the death of the two shebait. In the meantime the respondents were directed under Order of this Court to carry out the daily seva puja only. Similar order of injunction was made restraining the petitioners also from having their names mutated with the record of the settlement department till further order of the court. By consent of the parties the matter was treated as part heard. It appears that by this interim order the learned Judge not only

allowed the relief that has been claimed in the suit for transfer but also granted interim order in respect of the matters which were not prayed for in the said application for transfer or in the application for temporary injunction filed in the said Alipore Suit. Undoubtedly the rule was made returnable on the 17th May, 1984 and in accordance with Rule 5 and 6 of Chapter XX of the Original Side Rules. On the returnable date the other party was to show cause why the suit should not be transferred and on that date the party might appear and might also pray before the Court for grant of further time for showing cause against the Rule. On the returnable date the Rule cannot be heard on in the absence of any leave granted to renew the prayer for further interim order at the time of issuance of the Rule and interim order no prayer for further interim order can be made nor any further interim order can be made. The word Rule means according to Black's Law Dictionary 5th Edition at Page 1497 that it is a command to the party to show cause why he should not be compelled to do the act required or why the object of the Rule should not be enforced. It is not an order made by the court on the question of one of the party to the suit commanding the proceedings to do some act or to show cause why some acts should not be done. It is usually upon some interlocutory matter. Show cause order has been defined in Black's Dictionary as an order, decree, execution etc. to appear as directed and present to the court such reasons and considerations as one has to offer why a particular order, decree etc. should not be confirmed, take effect, be executed, or as the case may be. An order to a person or corporation to appear in court and explain why the court should not take a proposed action. If the person or corporation fails to appear or to give sufficient reasons why the court should take no action the court will take the action. In this case a Rule has been issued to show cause why an order of transfer of the suit from the Alipore court to this Hon'ble Court should not be made and an interim order of stay of all further proceedings in the Alipore Suit has been made pending the hearing of the Rule on 7th May, 1984 by Pyne J. The said rule was made returnable on 17th May, 1984. It has been stated that the rule was not served on the respondents Nos. 12, 13 and 14. On the returnable day, that is, 17th May, 1984 the application came up in the list before Mrs. Khastgir J. who was pleased to pass the impugned order. This order was made in terms of prayer C of the petition of transfer and not only it purports to restrain the respondents and each of them from giving effect and/or acting on the basis of the purported deeds dated 17th July, 1976 as shebais under the said deeds in respect of properties of Srichaitanya Math and its other Maths at Mayapur and other places but also in respect of the property at 70B, Rash Behari Avenue, Calcutta. There was also further interim order restraining the respondents from getting their names mutated in the settlement records of rights as well as restraining them from filling up the disputed vacancy caused by the death of two shebais. In the mean time it was further directed that these respondents would carry out the daily seva puja only under the order of this court. Appropriate to mention in this connection that this interim order is beyond what was contained in prayer C of the application for transfer. Moreover, there was no leave granted at the time of

issuance of the Rule and the interim order by Pyne J. for moving before the Court for further interim order. Therefore, this grant of further interim order is wholly unwarranted. Moreover, there is already an interim order passed by the Subordinate Judge, Alipore on 4th June, 1983 in Title Suit No. 60 of 1983 restraining the respondents from dealing with or disposing of the property in suit belonging to Srichaitanya Math at Mayapur as well as Sri Chaintanya Research Institute of 70B, Rash Behari Avenue and further there was an interim order restraining the respondents from taking the original documents dated 7th July, 1976 as well as letter dated 14th Sept. 1976 written by the defendant No. 3, S. Brahmachari, to defendant No. 4. Sajjan Maharaj, and also the forensic report in connection therewith which has been kept in the custody of the learned Registrar, O. S. Calcutta High Court till further orders. This interim order is in force. Therefore, in such circumstances the passing of the further interim order on the returnable date is wholly bad and unwarranted. Moreover, as has been submitted on behalf of the appellants that on the returnable date the defendants opposite parties were directed to show cause as to why the suit should not be transferred or such other or further orders are made as this court may think fit and proper. The service of the Rule is not complete as the respondents 12, 13 and 14 who are staying outside the jurisdiction of this Hon''ble Court have not been served with the said Rule. Moreover, in accordance with the provisions of the Rule 5 and 6 of Chapter XX of the Original Side Rules on the returnable date the defendants opposite parties may appear and show cause and/or the defendants may pray for time for filing affidavit. Thereafter the direction is given for filing affidavit-in-reply and the rule is fixed for hearing. Moreover, it appears from the Black''s Law Dictionary 5th Edition, page 1195 that the word Rule means "an order made by a court", at the instance of one of the parties to the suit commanding a ministerial officer or the opposite party, to do some act, or to show cause why some act should not be done. It is usually upon some interlocutory matter. The word "show cause order" according to Black''s Dictionary signifies "an order decree, execution etc. to appear as directed and present to the court such reasons and considerations as one has to offer why a particular order, decree etc. should not be confirmed, take effect, be executed, or as the case may be. An order to a person or corporation to appear in court and explain why the court should not take a proposed action. If the person or corporation fails to appear or to give sufficient reasons why the court should take no action, the court will take the action"". Therefore, on the returnable date to show cause the impugned further interim order which has not been prayed for in the application for transfer of the Alipore Suit to this Hon''ble Court as has been made is wholly bad and unwarranted and without jurisdiction. The impugned order directed filing of affidavit-in-opposition by 11th June, 1984 and reply by 18th June, 1984 and adjourned the matter till 19th June, 1984. The impugned order also recorded further that by consent of the parties the matter was treated as part heard. It has been seriously contended on behalf of the appellant that there was no consent given by the learned Advocate for the appellant for keeping the matter as part heard. Moreover, the Rule was not ready as regards service and as such

the rule cannot be taken up for hearing unless service is complete. This submission, in my opinion, has got substance. The Rule has not been served on the respondents and as such in the absence of the rule being not ready as regards service the rule cannot be taken up for hearing and it cannot be treated as part heard. This will also be further clear and evident from the impugned order itself which gave direction for filing of affidavit-in-opposition and affidavit-in-reply in these circumstances, I am constrained to hold that the impugned order made on the returnable date, that is, on 17th May, 1984 is wholly illegal and unwarranted and without jurisdiction. The argument that has been tried to be advanced on behalf of the respondents that the Alipore Suit was not made ready as regards service within the period of more or less about one year and that the rule issued on the application under Order 39 Rule 11 and 12 of the CPC was not taken up for hearing and hence this application for transfer has been made to this Hon"ble Court and prayer for interim order has been made therein is unsustainable. In view of the facts appearing from the order sheet of title suit No. 60 of 1983 annexed as Annexure B to the appeal it is clear and evident that though the affidavit-in-opposition was filed by the respondent No. 2 against the said application for temporary injunction on or before 6th Feb. 1984 yet it appears from Orders 14 to 17 that the said Rule could not be heard in view of repeated prayers for adjournment made on behalf of the plaintiffs and ultimately the instant application for transfer of the suit was moved on 7th May, 1984 and the interim order as stated hereinbefore was granted staying all further proceedings in the Alipore Suit. In such circumstances this contention on behalf of the respondents is wholly unsustainable. It has been tried to be contended on behalf of the respondents that the impugned order is an ancillary order and as such it cannot be questioned. This submission, in my opinion, has no substance inasmuch as in view of the interim order passed on 7th May, 1983 staying all further proceedings in the Alipore Suit, the impugned further interim order made on 17th May, 1983 cannot under any circumstances be considered to be ancillary order as it is not in aid of the order of transfer. Moreover, there is no urgency or apparent injury which is likely to be caused immediately of the said interim further order is not granted. This will be evident from the statements made in the application for transfer. The grant of the further interim order by the impugned order practically and in effect purports to give the entire relief claimed in the suit even though there is no urgency or immediate injury to the applicants. This order is, therefore, illegal and bad. Reference may be made in this connection to the observation of this Hon"ble Court made in case of Rameswar Lath v. Calcutta Wheat and Seeds Association (1936) 40 CWN 1201. It has been observed that it was neither the rule nor the practice of the Court to grant on an interlocutory application an injunction which will have the practical effect of granting the entire relief claimed in the suit in the absence of apparent urgency and injury to the applicant. This observation was made following the decision in the case of Dodd v. Amalgamated Marine Workers Union (1924) 93 LJ Ch 65 wherein it has been held by Lord Sternd M. R. as follows: "It may be right in certain cases to give all the relief claimed in the action upon interlocutory motion

even although there has been no agreement between the parties to treat the motion as the trial of the action but that is not the rule, and it is not the usual practice of the Court."

8. The grant of interim order is undoubtedly the discretionary jurisdiction of the learned trial Judge. But this discretion has to be exercised reasonably fairly and justly and not arbitrarily and unreasonably and capriciously. In the instant case as I have held hereinbefore that the further interim order has been made on the returnable date which was fixed for showing cause and as such there was no occasion for the grant of the further interim order on that date nor there was anything before the court from which it can be seen that there was an immediate urgency which impelled the court to make such a further interim order on the returnable date. In such circumstances, in my opinion, the discretion exercised by the learned trial judge is not in accordance with law and well established principles for exercise of such discretionary jurisdiction. It is pertinent to refer to the observation of the Supreme Court in *The Printers (Mysore) Private Ltd. Vs. Pothan Joseph*, where it has been held that "where the discretion vested in the court u/s 34 has been exercised by the trial court, the appellate court should be slow to interfere with the exercise of the said discretion. If the discretion has been exercised by the trial 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 exercise of discretion by trial court. It is not ordinarily open to the appellate court to substitute its own exercise of discretion for that of the trial Judge, but if it appears to the appellate court that in exercising its discretion the trial court has acted unreasonably or capriciously or has ignored relevant facts and has adopted an unjudicial approach then certainly it would be open to the appellate court to interfere with the trial court's exercise of discretion....". Therefore, the impugned order having been made not in proper exercise of the discretion of the learned trial judge is liable to be set aside by this court.

9. The order dated the 17th May, 1984 which has been appealed against, is stayed till the disposal of the appeal. We make it clear, however, that we are not passing any other interim order. By consent of learned Advocate for both the parties the time to file A/C is extended till the 10th December, 1984 and A/R till the 17th December, 1984.

10. All parties to act on a signed copy of the operative part of this judgment.

S.K. Mookherjee, J.

11. I agree.