

**Present: Smt. Suparna Ray (JO Code:WB00711)**  
**Judge, Commercial Court at Alipore**  
**T.S. (Com) 15 of 2025**  
**CNR No. WBSP18-000111-2025**

**Order No.** 03

**Date:** 01.08.2025

**In the matter of:**

Suit for declaration, recovery of money perpetual injunction and other appropriate reliefs valued at Rs. 9,93,30,270/-.

**AND**

**In the matter of:**

Zoom Vanijya Private Limited.

**Vs.**

The Statesman Limited & Anr.

**Appearance:**

Mr. Samriddha Sen

Ms. Mala Pal (Basak)

.....Ld. Advocates.

**Order**

Today the record is put up by instigation of the plaintiff whereby and whereunder plaintiff submits an application filed under Order XXXIX Rules 1 and 2 read with Section 151 of the Code of Civil Procedure, 1908 (hereinafter referred to as the CPC), which has been registered as I.A. No. 03 of 2025.

At this stage, Mr. Sen, Ld. Advocate for the petitioner moves the said application before this Court *ex parte*.

In the said application the petitioner herein has prayed for:

- a. Permit the instant application to be moved *ex parte* and without notice to the respondents;
- b. An order of injunction be passed restraining the respondent no. 1 and its men, agents, successors, assigns, employees, representatives and anyone claiming through or under them and each of them from dealing with and/or disposing of and/or alienating and/or encumbering and creating third party right or interest in any of its

movable and immovable properties or from removing any monies from its bank accounts, without leaving apart a sum of Rs. 9,93,30,270/-;

**(emphasis added)**

c. Alternatively, without prejudice to prayer (b) hereinabove, an order of injunction be passed restraining the respondent no. 1 and its men, agents, successors, assigns, employees, representatives and anyone claiming through or under them and each of them from receiving payment of its share of sale proceeds of Premises No. 4, Chowringhee Square, Kolkata 700 001 from the respondent no. 2 and upon the respondent no. 2 and its men, agents, successors, assigns, employees claiming through or under them and each of them from making any payment of any part of the said sale proceeds of premises no. 4, Chowringhee Square, Kolkata 700 001 to the respondent no. 1, pending disposal of the present suit;

d. An interim order and/or order(s) in terms of prayers (b) and (c) hereinabove;

e. Such further and/or other order or orders be passed, direction or directions be given as Your Honour may deem fit and proper.

However, it appears from the record that in the instant case, the petitioner on 30.07.2025 moved another two applications being registered as I.A. No. 01 of 2025 and I.A. No. 02 of 2025.

I.A. No. 01 of 2025 was filed by the petitioner under Section 12A of the Commercial Courts Act, 2015 and by virtue of an Order No. 2 dated 30.07.2025 this Court disposed off the said application granting leave to the petitioner stipulated under Section 12A of the said 2015 Act.

I.A. No. 02 of 2025 has been filed with a caption under Order XXXVIII Rule 5 read with Order XXXIX Rule 1 and 2 read with Section 151 of CPC praying for relief as stated hereunder:

- a. The respondent no. 1 be directed to show cause and/or adequate cause as to why its assets and properties should not be attached before judgment;
- b. If the respondent no. 1 fails to show cause or adequate cause, all assets and properties of the respondent no. 1 including all monies in several bank accounts be attached before judgment;
- c. An order of injunction be passed restraining the respondent no. 1 from dealing with and/or disposing of and/or alienating and/or encumbering and creating third party right or interest in any of its movable and immovable properties or from removing any moneys from its bank account, without leaving apart a sum of Rs. 9,93,30,270/-;

**(emphasis added)**

- d. An order of injunction be passed restraining the respondent no. 1 from receiving payment of its share of sale proceeds of premises no. 4, Chowringhee Square, Kolkata 700 001 from the respondent no. 2 and upon the respondent no. 2 from making any payment of any part of the said sale proceeds to the respondent no. 1, pending disposal of the present suit;
- e. Ad interim orders in terms of prayers above;
- f. Such further and/or other order or orders be passed, direction or directions be given as Your Honour may deem fit and proper.

However, Mr. Sen, Ld. Advocate appearing for the petitioner, while moving the said application (I.A. No. 02 of 2025), only pressed the prayer (c) for getting an *ex parte ad interim* order.

This Court by the Order no. 02 dated 30.07.2025 did not incline to pass any order considering that the prayers as prayed for in I.A. No. 02 of 2025 are corresponding with the prayer for attachment which cant not at all be granted in an *ex parte ad interim* stage. It is apposite to mention that while penning the said order, this Court relied on the ratios of the cases *Premraj Mundra v. Md. Maneck Gazi and Ors.*, *Raman Tech & Process Engg. Co. v. Solanki Traders* and *Harleen Jairath v. Prabha Surana and Another*.

However, it is convenient to reproduce the niche averment of the Order dated 30.07.2025 hereunder:

*“Considering the discussion made in the foregoing paragraphs as well as the submissions advanced by Ld. Advocate on behalf of the petitioner, this Court is of the view that an order under Order 38 Rule 5 of the CPC can be issued only if circumstances exist as are stated therein to the protanto satisfaction of the Court and it would not be justified in issuing or for attachment before judgment, or for security merely because it thinks that no harm would be done thereby or that the Defendants would not be prejudiced.*

*Moreover, an order of attachment before judgment is drastic remedy and the power has to be exercised with utmost care and caution, as it may be likely to ruin the reputation of the parties against whom the power is exercised. It is also settled principle of law that the mere mechanical repetition of the provisions in the Code of Civil Procedure or the language therein without any basic strata of truth underlining the allegation or vague and general allegation that the respondents are about to dispossess of the property or to remove it beyond the jurisdiction of the Court, totally unsupported by particulars, would not be sufficient compliance with Order 38 Rule 5 of the CPC. Attachment before judgment is not a process to be adopted as matter of course. The suit is yet to be tried and the defence of the respondent yet to be tested. At the nebulous juncture, the relief which is extraordinary could be granted only if the conditions for it grant, as per the provision of the Code of Civil Procedure, stand satisfied. The process is never meant as lever for the petitioner to coerce the respondents to come to terms. Hence, utmost caution and circumspection should guide the Court.*

*So, considering the documents annexed with the application under Order 38 Rule 5 of the CPC filed by the petitioner, this Court is in the opinion that the petitioner has not a strong prima facie case to issue any ad interim order of attachment before judgment as contemplated under Order 38 Rule 5 read with Order 39 Rule 1 and 2 read with Section 151 of CPC without hearing of the respondents.*

*Hence, the prayer for ex parte ad interim order of injunction as prayed for by the petitioner is hereby considered and rejected at this stage.*

*Issue notice upon the respondents directing them to show cause within fifteen days (15) of the receipt of the notice as to why the order of temporary injunction as prayed for in the instant application shall not be granted in favour of the petitioner.*

*Petitioner is directed to serve the copy of this order along with the aforesaid application upon the respondents at once and to file affidavit of service within 48 hours (excluding holidays).*

*Issue summons at once.”*

While moving the I.A. No. 03 of 2025 today, Mr. Sen, Ld. Advocate for the petitioner has prayed for an order in respect of prayers (a) and (b) as expounded therein.

However, on careful perusal of the prayers as averred in the applications being registered as I.A. No. 02 of 2025 and I.A. No. 03 of 2025, it is fact that the prayer (c) contained in I.A. No. 02 of 2025 is akin to the prayer (b) of I.A. No. 03 of 2025.

Mr. Sen has contended that scope of relief as prayed in I.A. No. 03 of 2025 is different and based on the changed circumstances. As such, the principle of *res judicata* is not make an impediment to pass any order in respect of aforesaid prayed of I.A. No. 03 of 2025. He has further submitted that this Court is enlarging to protect to the interest of the petitioner by resorting to the provision of Order XXXIX Rule 3 of the CPC.

To buttress his submission, Mr. Sen has relied on the decision of the Hon'ble Supreme Court of India reported in (1992) 1 SCC 719 and submitted that upon being shown the *prima facie* case, an order of injunction may be granted as the nature of preventive relief to a litigant to prevent future possible injury. He has further relied on the case reported in (2007) 1 WLR.

However, this Court seems the facts as expounded in the aforesaid cases are not squarely be applicable in the instant case inasmuch as in the instant case test of granting any relief in respect of such prayer(s) (the prayer (c) in I.A. No. 02 of 2025 and/or the prayer (b) in I.A. No. 03 of 2025) has already been tested by this Court in Order no. 2 dated 30.07.2025.

And, at the cost of repetition, this Court on that respect again relies on certain averments as stated in Order dated 30.07.2025 as under:

*Hence, the prayer for ex parte ad interim order of injunction as prayed for by the petitioner is hereby considered and rejected at this stage.*

*Issue notice upon the respondents directing them to show cause within fifteen days (15) of the receipt of the notice as to why the order of temporary injunction as prayed for in the instant application shall not be granted in favour of the petitioner.*

*Petitioner is directed to serve the copy of this order along with the aforesaid application upon the respondents at once and to file affidavit of service within 48 hours (excluding holidays).*

*Issue summons at once.”* **(emphasis added)**

It is of the utmost importance to note that an *ex parte* order of injunction is an exception, the general rule being that order be passed only after hearing both the parties. More so, this court being the court of equity and the relief claimed is also equitable in nature, the party invoking the jurisdiction of the court has to show that it was not inequitable in its dealings with the party against whom it is seeking relief.

Now, from the materials on record it appears that this court after careful and through examination of the pleadings and documents on record refused the prayer of *ex parte ad interim* order on the last occasion (30/07/25) and directed

the plaintiff/petitioner to serve the copy of that order along with the said application (I.A. No. 02 of 2025) upon the respondents at once and to file such affidavit of service within 48 hours. But till today the plaintiff/petitioner did not serve the same upon the respondents rather has moved the present application under Order XXXIX Rule 1 and 2 of the CPC *ex parte* with almost a self same set of prayers.

Therefore, in view of above circumstances, the prayer for *ex parte ad interim* order of injunction as prayed for by the petitioner is hereby considered and rejected at this stage.

Issue notice upon the respondents directing them to show cause within **seven days (07)** of the receipt of the notice as to why the order of temporary injunction as prayed for in the instant application shall not be granted in favour of the petitioner.

Petitioner is directed to serve the copy of this order along with the aforesaid application upon the respondents at once and to file affidavit of service before this Court on the date as fixed hereunder.

Issue summons at once.

Fix the matter on 11.08.2025 at 10:45 a.m. for S/R of the defendants/respondents.

Parties are to act forthwith on the basis of the downloaded copy of this Order.

Dictated and corrected by me

Sd/-

Judge, Commercial Court at Alipore,  
For South 24 Parganas, Purba Midnapore,  
Paschim Midnapore & Jhargram

Sd/-

Judge, Commercial Court at Alipore,  
For South 24 Parganas, Purba Midnapore,  
Paschim Midnapore & Jhargram