

D/L.38.
March 24, 2026.
MNS.

FMA No. 136 of 2026
+
CAN 1 of 2026

Poonawalla Fincorp Limited
Vs.
Prasenjit Mondal

Mr. Shounak Mukhopadhyay,
Ms. Soni Ojha,
Ms. Sambrita B. Chatterjee

... for the appellant.

Re : CAN 1 of 2026 (stay)

1. The affidavit-of-service filed in Court be kept on record.
2. Despite service, none appears for the respondent to oppose the stay application.
3. The present appeal has been preferred against an order of ad interim injunction restraining the defendant/appellant, a financial company, from disturbing the peaceful possession of the plaintiff/respondent in respect of Vehicle No. WB-45-5433 without due process of law till the next date fixed, subject to the condition that the respondent would go on depositing Rs. 25,000/- every month in the loan account of the respondent till the liquidation of the loan.
4. Learned counsel appearing for the appellant submits that apart from there being an arbitration clause in the loan agreement and other legal provisions debarring the suit, fact remains that even as per the admission in the plaint,

the amount of monthly instalment is Rs. 52,033/- in respect of the loan taken by the plaintiff/respondent from the defendant/appellant.

5. However, without any rhyme or reason, the learned trial Judge rewrote the contract between the parties and granted injunction on condition of payment of less than half the amount of instalments, that is, Rs. 25,000/- per month.

6. Learned counsel for the appellant cites an unreported judgment of the Hon'ble Supreme Court in the case of *Venkataraman Krishnamurthy and another vs. Lodha Crown Buildmart Pvt. Ltd. (Civil Appeal No. 971 of 2023)*, in support of the proposition that the court cannot rewrite the contract between the parties.

7. Upon hearing learned counsel for the appellant, we find from paragraph no. 7 of the plaint that there is a clear admission on the part of the plaintiff/respondent to the effect that the monthly instalments in respect of the loan taken by the plaintiff/respondent is Rs. 52,033/- every month, commencing from October 5, 2025 till August 5, 2029.

8. Moreover, as rightly pointed out by learned counsel for the appellant, even in the repayment schedule, which is referred to in the plaint itself, the quantum of monthly instalment is mentioned as Rs.52,033/-.

9. Hence, the impugned order is *prima facie* vitiated by the palpable error of the learned trial Judge in rewriting the contract between the parties, thereby modifying the quantum of monthly instalments as stipulated in the

contract between the parties and reducing it to less than half of the contractual amount, as a condition for grant of injunction.

10. Since the respondent chooses not to appear despite service, we take up the stay application for hearing *ex parte*.

11. In view of the above findings, CAN 1 of 2026 is disposed of by granting stay of operation of the impugned order, bearing order no. 2, dated December 23, 2025 passed by the learned Judge, Tenth Bench, City Civil Court at Calcutta, in title Suit No. 2979 of 2025, subject to the appellant being restrained by an order of injunction from disturbing the possession of the plaintiff/respondent in respect of vehicle no. WB-45-5433 without due process of law, conditional upon the respondent going on depositing Rs. 52,033/- per month in the respondent's loan account with the appellant.

12. Such interim order shall continue till the disposal of the appeal.

13. In the event of default in making any of such payments, the injunction order on the appellant granted above shall stand automatically vacated and the operation of the order impugned herein shall continue to remain stayed without further reference to the court.

14. There will be no order as to costs.

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15. The appellant shall put in postal costs, due requisites and written up notice form for service of notice of appeal on the respondent within a week from date.

16. The appellant shall prepare and file the requisite number of informal paper books within six weeks from date.

17. In view of the short ambit of the appeal, calling for the trial court records is dispensed with.

18. It is made clear that pendency of the appeal shall not preclude the learned trial Judge from continuing with the hearing of the suit as well as connected pending interlocutory applications.

19. Liberty to the parties to mention the appeal for inclusion in the list for hearing as and when the same is ready for hearing.

(Supratim Bhattacharya, J.) (Sabyasachi Bhattacharyya, J.)