

IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
Commercial Division
Appellate Side

Before:

The Hon'ble Justice Hiranmay Bhattacharyya
And
The Hon'ble Justice Biswaroop Chowdhury

AO-COM 28 of 2026

With

CAN 1 of 2026

Haldia Development Authority
VS.

The Haldia Water Services Private Limited

For the Appellant

: Mr. Kishore Dutta, Sr. Adv.
Mr. Amit Kumar Nag
Mr. Swarajit Dey
Mr. Maharnab Roy
Mr. Subhajit Ghosh
Ms. Barnisha Samanta

..... advocates

For the Respondent

: Mr. Krishnaraj Thaker, Sr. Adv.
Mr. Altamash Alim
Mr. Aurin Chakraborty
Mr. Sunit Biswas
Ms. Rajashree Bhowmick
Mr. Purnanker Biswas

.....advocates

Reserved on

: 03.06.2026

Judgment on

: 09.06.2026

Hiranmay Bhattacharyya, J.:-

1. This appeal is at the instance of the defendant and is directed against a judgment and order being no. 2 dated May 13, 2026 passed by the learned

Judge Commercial Court at Alipore in IA No. 2 of 2026 arising out of M.S. (Com) No. 13 of 2026.

2. By the impugned judgment, the defendant/appellant herein was restrained from deducting, appropriating or adjusting any amount towards alleged incremental revenue and/or license fee from the Revenue Collection Account till the next date.
3. Facts giving rise to this appeal in a nutshell are as follows.

- (a) A Concession Agreement (for short "CA") was entered into between the appellant and the respondent on August 16, 2019. By virtue of the said CA, the respondent was granted the exclusive right and license to operate the Project as defined in the said agreement. In terms of the said agreement the respondent assumed complete responsibility for the operation, management, maintenance and upkeep of the entire water supply project, including repair, renovation and ensuring uninterrupted and continuous supply of water to all categories of consumers namely industrial, commercial, domestic and municipal.
- (b) The respondent was obliged to pay a fixed annual license fee of Rs. 24,00,00,000/- (Rupees 24 crores) only in equal monthly installments and further, share 65.5% of the incremental revenue earned during each concession year with the appellant in terms of Article 12 thereof.
- (c) In terms of the Article 13 of the Agreement, the respondents was entitled to raise invoices and collect water charges in the name of and on behalf of the appellant in accordance with the applicable tariff and such invoices were to be honoured within the stipulated period failing which interest and consequences would follow.
- (d) Since the commencement of commercial operations, several consumers of the appellant have defaulted in payment of water charges.

- (e) On account of breach of clause 13.5 of the CA by the appellant, the respondent filed a suit being Money Suit (Com.) No. 116 of 2023 and prayed for an order of temporary injunction. The learned Judge of the Commercial Court passed an order of ex-parte ad interim injunction in the nature of status quo to be maintained with respect to the Revenue Collection Account as on that date. The said order of injunction was extended from time to time and was made absolute till the disposal of the suit by an order dated October 19, 2023.
- (f) In terms of the said order of injunction the appellant issued monthly revenue appropriation advice to the bank against revenue collection account for the month of January, 2023 till September, 2025 and the appellant has wrongfully withheld from the respondent for the months of October 2025, November 2025, December 2025, January 2026 and February 2026 an aggregate sum of Rs. 11, 87,03,181/- (Rupees eleven crore eighty seven lakh three thousand one hundred eighty one only).
- (g) The Chief Executive Officer of the appellant, by a letter dated January 29, 2026, issued appropriation advice to the bank thereby depriving the respondent an aggregate sum of Rs. 11, 87, 03, 181/- (Rupees eleven crores eighty-seven lakhs three thousand one hundred eighty-one only) and has stopped paying the respondent the balance amount.
- (h) On the aforesaid grounds the respondent has filed the instant suit for recovery of money and for perpetual injunction.
4. In connection with the said suit the respondent filed an application under Order 39 Rule 1 and 2 read with Section 151 of the Code of Civil Procedure which was registered as IA No. 2 of 2026.
5. The learned Trial Judge passed an ad interim order of injunction on May 13, 2026.

6. Being aggrieved by the said ad interim order of injunction dated May 13, 2026 the defendant has approached this Court.
7. Mr. Dutta, learned Senior Advocate appearing in support of the appeal contended that the cause of action for filing the instant suit is the alleged breach of the terms and conditions of the CA. He further contended that the respondent filed another suit being MS (Com) 116 of 2023 also on the ground of alleged breach of the terms and conditions of the CA. He thus contended that the instant suit being the second suit on the self-same cause of action is not maintainable. He further contended that the cause of action for filing the instant suit is the alleged violation of the interim order dated 19.10.2023 passed in MS (Com) 116 of 2023. Mr. Dutta contended that when Order 39 Rule 2A of the Code of Civil Procedure provides an efficacious remedy in case of alleged violation of an order of injunction, a fresh suit, without availing of the recourses under Order 39 Rule 2A of the Code, is not maintainable. Mr. Dutta further contended that the respondent has not prayed for a restraint order against the appellant from deducting, appropriating or adjusting any amount on account of license fees but the learned judge of the Commercial Court restrained the appellant from appropriating any amount on account of license fees from the Revenue Collection Account. Mr. Dutta further contended that the Revenue Appropriation advice dated January 29, 2026 was issued strictly in terms of Article 11.5 of the CA. He contended that the respondent acted in complete breach of the terms of the CA and failed/refused to pay the appellant's share (65.5%) of the incremental revenue earned by the respondent on account of sale of water above the specified limit. Mr. Dutta concluded by submitting that the impugned order is liable to be set aside.
8. Mr. Thakkar, learned Senior Advocate seriously disputed the submission made by Mr. Dutta. He contended that the appellant has not yet entered appearance in the said suit. He further submitted that since the injunction application is pending, the appellant should be relegated to the Commercial Court to contest the application for injunction by filing a written objection

thereto. He further contended that the scope of an appeal against an ad interim order of injunction is very limited. He submitted that the learned judge of the Commercial Court after considering the materials available on record passed an ad interim order of injunction by assigning cogent reasons in support thereof. He thus submitted that the impugned order calls for no interference by this Court. Mr. Thakkar further contended that the cause of action of the instant suit is the issuance of the letter dated 29.01.2026 by the appellant herein whereby the appellant claimed notional incremental revenue with the object of depriving the respondent from receiving the balance amount. He thus contended that the cause of action of the instant suit is different from the cause of action of the earlier suit. By referring to Article 13.5 of the CA, Mr. Thakkar contended that the appellant is obliged to discharge its reciprocal obligation by compensating the respondent for the outstanding dues from the defaulting customers in case the appellant makes a claim for incremental revenue in terms of Clause 12.2.1(i)(b) on any unrecovered amount from the consumers of water. Mr. Thakkar thus contended that the instant appeal is liable to be dismissed.

9. Heard the learned advocates for the parties and perused the materials placed.
10. The instant suit for recovery of money and for perpetual injunction was filed before the Commercial Court and the respondent filed an application under Section 12A of the Commercial Courts Act 2015 seeking exemption from pre-institution mediation and settlement. The learned Judge of the Commercial Court after considering the plaint granted leave for dispensation of Section 12A of the Commercial Courts Act 2015 as the suit contemplated an urgent relief. After such leave was granted the respondent moved the application under Order 39 Rule 1 and 2 read with Section 151 of the Code of Civil Procedure being IA No. 02 of 2026.
11. By an order being no. 2 dated 13.05.2016 the learned Judge of the Commercial Court restrained the defendant/appellant herein from deducting, appropriating, adjusting any amount towards alleged incremental

revenue and/or license fee from the Revenue Collection Account till the next date fixed. The respondent was directed to comply with the provisions of Order 39 Rule 3(a) and (b) of the Code of Civil Procedure.

12. It is well settled that a person aggrieved by an ex parte ad interim order of injunction has three-fold remedies. Firstly, he can file an objection against the application for injunction and the injunction application can be disposed of by the Court on merit. Secondly, such person can file an application under Order 39 Rule 4 of Code of Civil Procedure alleging suppression of material facts and can pray that the ex parte ad interim order of injunction be vacated, varied and/or set aside. Thirdly, he can challenge the said order before the appellate court under Order 43 Rule 1(r) of the Code of Civil Procedure.
13. In the case on hand, the defendant has taken recourse to the third remedy.
14. Though Mr. Dutta initially submitted that the impugned order is liable to be set aside as the plaintiff / respondent has suppressed material facts and documents but in course of his argument he contended that even if the statements made in the plaint and the injunction application are taken as true and correct, the respondent was not entitled to an order of injunction. In view of such stand taken by the learned Senior Counsel for the appellant this Court shall test the propriety of the impugned order on the basis of the case made out in the plaint and the injunction application and the documents that were placed on record.
15. The interlocutory remedy is intended to preserve in status quo, the rights of the parties which may appear on a prima facie case. It is now well settled that in an appeal against an ex parte ad interim order of injunction the appellate court will not interfere with the exercise of discretion of the court of first instance and substitute its own discretion except where the discretion has been shown to have been exercised arbitrarily or capriciously or perversely or where the Court had ignored the settled principles of law regulating grant or refusal of interlocutory injunction.

16. The Hon'ble Supreme Court in **Wander Ltd. v. Antox India (P) Ltd.**, reported at **1990 SCC Online SC 490** held thus-

“14. The appeals before the Division Bench were against the exercise of discretion by the Single Judge. In such appeals, the appellate court will not interfere with the exercise of discretion of the court of first instance and substitute its own discretion except where the discretion has been shown to have been exercised arbitrarily, or capriciously or perversely or where the court had ignored the settled principles of law regulating grant or refusal of interlocutory injunctions. An appeal against exercise of discretion is said to be an appeal on principle. Appellate court will not reassess the material and seek to reach a conclusion different from the one reached by the court below if the one reached by that court was reasonably possible on the material. The appellate court would normally not be justified in interfering with the exercise of discretion under appeal solely on the ground that if it had considered the matter at the trial stage it would have come to a contrary conclusion. 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 trial court's exercise of discretion. ”

(emphasis supplied)

17. Keeping in mind the limited scope of appeal against an ex parte ad interim order of injunction, this Court shall now test the legality and propriety of the impugned judgment.
18. After going through the averments made in the plaint and the injunction application it appears to this Court that the cause of action for filing the instant suit is the letter dated January 29, 2026. The respondent alleges that the appellant for the first time has claimed notional incremental revenue with the sole object of depriving the respondent from receiving the balance amount after meeting all the prior payment obligations. It is the contention of the respondent that if the appellant claims incremental revenue in terms of clause 12.2.1(i)(b) on any amount unrecovered from the consumers of water, then in that case the defendant has to discharge its reciprocal obligation as per Article 13.5 by compensating the plaintiff for the amount so defaulted by the consumers concerned. The respondent is aggrieved by issuance of appropriation advices for the months of October 2025 till February 2026. The respondent has prayed for perpetual injunction

restraining the appellant, its men, agents and assignees from claiming incremental revenue under Article 12.2.1(i)(b) of the agreement dated August 16,2019 on unrealized water charges without the appellant discharging its obligations under Article 13.5 in reimbursing such unrealized water charges. The respondent has also sought for perpetual injunction restraining the appellant its men , agents and assignees from withholding any amount payable to the respondent month by month after payment of Goods and Service tax, license fee, electrical charges, O&M expenses, independent engineers fees from out of the revenue collection.

19. At this stage it would be relevant to take note of some of the clauses of the CA the relevant portion of which, are extracted hereinafter-

“11.5.1 H.D.A. shall prior to the Compliance Date open and establish a current account for the purpose of depositing Water Charges ("Revenue Collection Account").

a. The priority of payment from such Revenue Collection Account shall be as follows:

(i) Sum collected towards Goods and Services Tax (GST) or any other Taxes, charges, duties, levies, cess etc as per the provision of Article 13.6 shall be first transferred to the nominated bank account of H.D.A.:

(ii) License Fees (including any outstanding License Fees) shall thereafter be transferred to the nominated bank account of H.D.A.;

(iii) Total cost of power consumed in or for the Project (including any outstanding power charges for power consumed post Compliance Date, delayed payment charges including interest, penalties, etc. which would be required to be paid in case of any defaulted bill) for the immediately preceding month shall be transferred to the nominated bank account of H.D.A for payment to the electricity supplying authority;

(iv) O & M expenses for the immediately preceding month as per the O & M Budget shall be transferred to the nominated bank account of the Concessionaire;

(v) Part of the salary of the Independent Engineer/ Consultant as agreed in this Agreement to be paid by the Concessionaire shall be transferred to the bank account as may be mutually agreed;

(vi) Amounts of claims admitted by either Party to be payable to the other to be paid on a quarterly basis; provided that in respect of claims which Parties do not agree to be payable to the other within 7 days of it being called upon to so admit, such amount shall be set aside and will not be paid to either Party, pending resolution of disputes in accordance with the dispute resolution process laid down in this Agreement;

(vii) Balance amount, if any, shall be transferred to the account of the Concessionaire.”

“Article 12.2 License Fee and Sharing of Incremental Revenue

In consideration of the grant of the Concession, the Concessionaire shall make the following payments / provide following facilities to H.D.A. in the manner and at the times mentioned hereunder:

12.2.1 License Fees

i) The Concessionaire shall pay an annual license fees during the whole of the Concession Period (hereinafter called and referred to as **"the License Fee"**) as per the schedule mentioned below:

(a) Rs.24,00,00,000/- (Rupees Twenty Four Crores only) per Concession Year as fixed annual License Fees irrespective of the quantity of water sold; and

(b) 65.5% (Sixty Five Point Five percent) of the Incremental Revenue (the "Incremental Revenue") earned by the Concessionaire during a Concession Year. Incremental Revenue shall be the revenues of the Concessionaire for the relevant Concession Year including all amounts received (or which would have been received) from Customers for the Services for sale of water above 4,47,41,700 kl. The same shall be calculated as below:”

(c)....

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(e)...

(ii)...

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(v).....”

“Article 13.5

In cases where there is default in payment of monthly Water Charges by any of the Customers ("Defaulting Customer"), the Concessionaire, acting in the name and on behalf of H.D.A., shall take such steps to recover its outstanding dues under Applicable Laws which shall include but not be limited to issuance of repeated fortnightly notices to such Defaulting Customers for payment of the outstanding dues. In the event, such Defaulting Customers fail to pay the outstanding dues after 60 (sixty) days from date of receipt of the first notice, the Concessionaire shall intimate H.D.A. in writing about such Defaulting Customers along with details of the Defaulting Customer, invoice(s) raised, copies of notices for recovery of outstanding dues sent to Defaulting Customers, and proof of dispatch of bills and notices sent to recover the outstanding dues from such Defaulting Customers. H.D.A shall endeavor to recover the outstanding dues from such Defaulting Customers only after being satisfied that the Concessionaire has made necessary attempts to recover the outstanding dues from Defaulting Customers. In the event H.D.A. too is unable to recover such amounts due from the Defaulting Customers within 30 (thirty) days from the date of intimation by the Concessionaire of their default, H.D.A. may in its own discretion instruct the Concessionaire to disconnect the Services to such defaulting Customers. If H.D.A. does not issue any instructions to disconnect water supply to defaulting Customers or recover the amounts due within 30 (thirty) days from the date of intimation by the Concessionaire of their default, then H.D.A. shall compensate the Concessionaire for the amount in default after determining that the Concessionaire has taken necessary steps to recover the outstanding dues from such Defaulting Customers.

Provided That if Defaulting Customers after disconnection of the Services settles and pay all the dues of the invoice(s) to the Concessionaire, the Concessionaire shall promptly intimate the same to H.D.A. and H.D.A. after recovering re-connection charges shall approve the resumption of supply and the Concessionaire shall resume the supply within 24 hours of such approval.

The reconnection charges shall be deposited in the Revenue Collection Account. Any amount already compensated by H.D.A. shall be forthwith made good to H.D.A.”

20. After going through Clause 11.5.1(a) this Court finds that the balance amount, if any, as indicated under sub-clause (vii) shall be arrived at after appropriating the payments indicated under sub-clauses (i) to (vi). Sub-clause (ii) refers to license fees. Thus the balance amount, if any, under sub-clause (vii) shall be arrived at after payment of license fees.
21. Article 12.2 deals with license fee and sharing of incremental revenue. Clause 12.2.1 deals with license fees. Clause 12.2.1(i)(a) states that the fixed annual license fees irrespective of the quantity of water sold shall be Rs. 24,00,00,000/- (twenty-four crores only) per concession year. Clause 12.2.1(i)(b) deals with incremental revenue for the services for sale of water above 4,47,41,700 KL. Thus, as per Article 12.2.1(i)(b) the appellant shall be entitled to 65.5% of the incremental revenue earned by the respondent during a concession year.
22. Clause 11.5.1(vi) states that amounts of claim admitted by either party shall be payable to the other and in case of a dispute such amount shall be set aside and will not be paid to either party pending resolution of disputes in accordance with the dispute resolution process laid down in the agreement.
23. From the letter dated November 25, 2025 issued by the respondent to the Chief Executive Officer of the appellant on the subject apportionment of revenue for the month of October 2025, it appears to this Court that the respondent has calculated the balance amount payable for the month of October 2025 to be Rs. 2,72,47,034.62/- after apportionment of fund under various heads as indicated under Clauses 11.5.1(a) including fixed license fees pertaining to the month of October 2025 i.e., Rs. 2 crores. Thus, it is evident that the apportionment of the fixed license fees per month from the revenue collection account is not in dispute.
24. That apart, upon reading the averments made in the plaint and the injunction application it also does not appear to this Court that the

respondent has raised any dispute as to the apportionment of the fixed license fees on monthly basis from the Revenue Collection Account.

25. The only dispute raised by the respondent in the plaint and the injunction application is against the action of the appellant in claiming incremental revenue under Article 12.2.1(i)(b) on unrealized water charges without the appellant discharging its obligation under Article 13.5 in reimbursing such unrealized water charges.
26. After going through Article 13.5 of the CA it prima facie appears to this Court that the obligation of the appellant to compensate the respondent for the amount in default shall arise if the appellant does not issue any instructions to disconnect water supply to defaulting customers or recover the amounts due within thirty days from the date of intimation by the respondent of their default and after it is determined that the respondent has taken necessary steps to recover the outstanding dues from such defaulting customers.
27. Though Mr. Thakkar, learned Senior Counsel for the respondent sought to argue on the provisions of the Contract Act on reciprocal promises this Court did not allow the learned Senior Counsel to argue on such point at this stage as the appellant is yet to file the written objection to the injunction application before the Commercial Court.
28. This Court finds that the pendency of an earlier suit between the parties has been disclosed in the plaint of the instant suit. It prima facie appears to this Court that the cause of action of the instant suit is relatable to the attempt made by the appellant to adjust the amount claimed on account of incremental revenue against the balance amount alleged to be due and payable to the respondent and it arose subsequent to the filing of the earlier suit. However, since the appellant is yet to file written objection to the injunction application, this Court refrains from making any further observation on the maintainability of the suit at this stage. It will be open to

the appellant to raise all points including the point of maintainability of the instant suit in the written objection to the injunction application.

29. As observed hereinbefore, the issue relating to apportionment of fixed license fees on monthly basis from the Revenue Collection Account is not in dispute. It appears to this Court that the Learned Judge of the Commercial Court failed to appreciate the distinction between fixed License fees under Article 12.2.1(i) (a) and incremental revenue under Article 12.2.1(i)(b). This Court is of the considered view that the learned judge of the Commercial Court while passing the impugned order granted relief which was not even prayed for by the respondent. To the mind of this Court, the learned judge of the Commercial Court while granting ex parte ad interim injunction exercised its discretion arbitrarily.
30. For all the reasons as aforesaid, this Court holds that the learned Judge of the Commercial Court erred in law by restraining the appellant from deducting, appropriating or adjusting any amount towards license fees more particularly Fixed License fees from the Revenue Collection Account. This Court is, therefore, inclined to modify the ad interim order of injunction.
31. There shall be an order of injunction restraining the appellant from deducting, appropriating or adjusting incremental revenue under Article 12.2.1 (b) of the CA from the Revenue Collection Account till the disposal of the temporary injunction application. The impugned judgement and order thus stand modified. The Appeal stands allowed in part. Accordingly, the application stands disposed of.
32. Appellant is directed to file written objection to the injunction application before the Learned Judge of the Commercial Court on or before 10.06.2026 upon prior service of such copy to the respondent. Reply thereto, if any, be filed by the respondent on or before 15.06.2026 upon prior service to the appellant. The learned Judge of the Commercial Court is requested to take up the hearing of the injunction application on the next date fixed i.e., 16.06.2026 and make an endeavour to dispose of the same as expeditiously

as possible but preferably within a period of eight weeks from the next date fixed without granting any unnecessary adjournments to either of the parties.

33. Before parting, it is made clear that the findings recorded hereinbefore are all prima facie only for the purpose of supporting the ultimate conclusions arrived at by this Court. Needless to mention that the consideration at the time of passing an ad interim order of injunction is different from the consideration at the time of passing temporary injunction and none of the observations made hereinbefore shall have any impact on the merit of the temporary injunction application. The learned Judge of the Commercial Court shall not be swayed by the fact that this Court has modified the impugned order and shall decide the injunction application independently on its merit and in accordance with law.
34. There shall be, however, no order as to costs.
35. Urgent photostat certified copies, if applied for, be supplied to the parties upon compliance of all formalities.

I agree.

(Biswaroop Chowdhury, J.)

(Hiranmay Bhattacharyya, J.)