



AD – 26
Ct No.16
13.07.2026
(SSS)

FMAT 226 of 2026
with
CAN 1 of 2026

Partha Sarathi Sen
Vs.
Dhruba Sen and Anr.

Mr. Aditya Kedia,
Mr. Sourajit Dasgupta,
Ms. Shreya Trivedi
.....For the appellant.

1. The present challenge has been preferred against the refusal of ad-interim injunction in a probate proceeding instituted by the present appellant, who is both the executor and the beneficiary of the subject Will.
2. By the said Will, a previous registered Will executed by the self-same testator was revoked.
3. The apparent premise of such refusal is that in view of Section 213 of the Indian Succession Act, no right as executor or legatee can be established until probate of the Will is granted.
4. However, *prima facie* such ground appears to be specious, inasmuch as in a probate proceeding, in terms of Section 211, read with Section 213, of the Indian Succession Act, it is the executor who



has to represent the estate of the deceased testator and in aid of the final relief to be granted, that is, probate, interim protection may very well be sought with regard to the subject-matter of the Will.

5. Hence, an arguable case has been made out for hearing the appeal on merits. Accordingly, FMAT 226 of 2026 is admitted, to be heard on the above questions and the other grounds taken in the memorandum of appeal.

6. The respondent no.1 and/or his men and agents shall remain restrained by an order of injunction from dealing with and/or creating any third party interest and/or changing the nature and character in respect of the immovable property which is the subject matter of the Will, being Flat no. 1A, "Sutanuti Abasan", Block -A, 1st Floor, 10D, Kashi Mitra Ghat Street, Police Station - Shyampukur, Kolkata - 700003, till disposal of CAN 1 of 2026.

7. The appellant shall serve copies of CAN 1 of 2026 and the memorandum of the appeal on respondent no. 1, indicating that the application shall be listed for hearing on July 27, 2026, when an affidavit of service to that effect shall be filed by the appellant.



8. Service on the proforma respondent no. 2 is dispensed with for the time being, in view of no relief having been sought against her.

(Sabyasachi Bhattacharyya, J.)

(Supratim Bhattacharya, J.)