

03.08.2026

Item no. ML42
Court No. 16

Asraf, A.R.(Ct.)

In the High Court at Calcutta
Civil Appellate Jurisdiction
Appellate Side

Case No.

FMAT 228 of 2026
with
CAN 1 of 2026

In the matter of :

KHELAFAT ALI SHA

...Appellant

VS.

JAHEDUL ALI SHA & ORS.

...Respondents

For the Appellant :

Mr. Tapan Kr. Mahapatra

...Advocate

1. A prayer for ad interim injunction made by the plaintiff/appellant before the Waqf Tribunal was not granted, which is deemed to be a refusal, on the ground that the Chairman-in-charge, being an Officer of the cadre of Civil Judge (Senior Division), was of the view that he did not have jurisdiction to pass any effective judicial order in view of the “mandate enshrined in Section 83 of the Unified Waqf Management, Empowerment, Efficiency and Development Act, 1995”.
2. Learned counsel for the appellant submits that in view of the concerned Judicial Officer, acting as the Chairman-in-charge, and the other two members, that is, the majority members of the Waqf Tribunal, being present, it could not be said that the said Tribunal was *coram non judice* within the contemplation of the statute.

3. Moreover, on the basis of the materials on record, it is submitted that a sufficient *prima facie* case for grant of ad interim injunction was made out.
4. We find from a plain reading of Section 83(4) of the 1995 Act that it is arguable as to whether, merely because no District Judge was manning the Waqf Tribunal on the relevant date, despite a Civil Judge (Senior Division) having been put in charge of the Tribunal and the other two members being present, the Tribunal was rendered a *coram non judice* to pass ad interim orders even in urgent cases.
5. Furthermore, from the materials annexed to the injunction application filed before the Tribunal and the averments made therein, we find that the *prima facie* possession of the appellant in respect of the suit premises, in the capacity of a *Mutawalli*, has been established, justifying the grant of ad interim protection to the appellant.
6. Accordingly, the appeal is admitted and shall be heard on the above question and the other grounds taken in the memorandum of appeal.
7. The respondents and/or their men and agents shall remain restrained by an order of injunction from interfering with and/or disturbing the peaceful cultivation of the suit property by the plaintiff/appellant till disposal of CAN 1 of 2026.

8. The appellant shall serve copies of the memorandum of appeal as well as the application on the respondents, indicating that the application shall be listed for hearing in the Monthly List of September, 2026, when an affidavit of service to that effect shall be filed by the appellant.

(Sabyasachi Bhattacharyya, J.)

(Supratim Bhattacharya, J.)