



D/L.55.
January 13, 2026.
MNS.

FMAT No. 511 of 2025
+
CAN 1 of 2025
+
CAN 2 of 2025

Salma Khatoon and others
Vs.
Sk. Nasiruddin

Mr. Tanmoy Mukherjee,
Mr. Kajal Roy,
Mr. Rudranil Das,
Mr. Suman Nandi

... for the appellants.

Mr. Avirup Chatterjee,
Mr. Rishov Das

...for the respondent.

Re : CAN 1 of 2025 (condonation)

1. The affidavit-of-service filed today be kept on record.
2. In view of no affidavits being invited, it is deemed that none of the allegations made in CAN 1 of 2025 are admitted by the respondents.
3. The delay of about 129 days in preferring the appeal has been sought to be explained on several grounds, one being that an application for vacating of the impugned ad interim order of injunction granted by the trial court had been filed, which was not taken up for hearing for a considerable time, upon which a different person was contacted and steps were taken for preferring the present appeal.
4. *Prima facie*, the pendency or attempts to file a vacating application cannot afford a ground for delay in



preferring an appeal against the ad interim order, since the two reliefs operate in different spheres.

5. However, in paragraph no.3(c) of the condonation application, it has been pleaded that the appellant no.1 is a patient of paralysis and the appellant no.2 is a patient of occasional seizure.

6. That apart, the appellant nos.3 and 4, the only other appellants, have been claimed to be illiterate ladies.

7. In such view of the matter, this court is of the opinion that keeping in view that the appellants might not have been in a position to be too diligent in preferring the appeal in view of their conditions and circumstances, the delay in preferring the appeal ought to be condoned by taking a lenient view of the matter.

8. Accordingly, CAN 1 of 2025 is allowed, thereby condoning the delay in preferring FMAT 511 of 2025.

Re: FMAT 511 of 2025

9. We take up the appeal now, for hearing under Order XLI Rule 11 of the Code of Civil Procedure.

10. The present appeal has been preferred against an ad interim order of injunction in a suit filed by plaintiff/respondent, *inter alia*, for a decree for declaration that a development agreement dated January 9, 2020 executed between the parties is subsisting and that the plaintiff/respondent has a right to develop the suit property on the basis of the same.



11. Learned counsel for the appellants argues that the ad interim order of injunction was granted on the basis of the development agreement-in-question, which is merely notarized but unregistered.

12. Learned counsel for the appellants places reliance on Section 17(1A) of the Registration Act, 1908 (in short “the 1908 Act”), read in conjunction with Section 53A of the Transfer of Property Act, 1882 (hereinafter referred to as “the Act of 1882”), as amended, to argue that by simultaneous introduction of Section 17(1A) in the 1908 Act and deletion of the mandate of registration in Section 53A of the 1882 Act by the 2001 Amending Act, the intention of the legislature was to retain the bar in respect of a written agreement contemplated under Section 53A of the Act of 1882, in so far as no reliance can be placed on the same unless it is registered.

13. Learned counsel for the appellants cites the judgment in the case of *Commissioner of Income Tax Vs. Balbir Singh Maini* reported at (2018) 12 Supreme Court Cases 354 in such context and argues that the Hon’ble Supreme Court held therein, *inter alia*, that there is no contract in force in the eye of law under Section 53A after 2001 unless the said contract is registered.

14. Learned counsel further submits that in view of the relevant clauses of the development agreement, the said agreement creates rights *in praesenti* in favour of the plaintiff/respondent, being the developer, and as such, the



document is, in any event, compulsorily registrable under Section 17(1A) of the 1908 Act as well.

15. As such, it is argued that the ad interim order of injunction on the strength of such unregistered document was palpably bad in law.

16. This appeal is required to be heard on the above question and as such is admitted.

17. Since learned counsel for the respondent is also present, we invite the parties to argue on the merits of the appeal, since the short question of law involved at the stage of passing of ad interim order would be the only question to be resolved in the appeal itself.

18. Learned counsel for the plaintiff/respondent seeks a day's accommodation to come prepared in the appeal and in addition submits that the argument now advanced by the appellants before this Court is alien to that made in the trial court, both in the application under Order XXXIX Rule 4 of the Code of Civil Procedure and the written objection to the injunction application filed by the appellants.

19. Furthermore, it is contended that the said ground is not mentioned in the Memorandum of the present appeal as well.

20. However, this Court is of the opinion that the question of ineffectiveness of the document, which is the very premise of the claim of the respondent in the suit, on the ground of alleged violation of Section 17 of the 1908 Act, is a pure question of law and can be raised by the appellants at any point of time.



21. However, we cannot accept the argument of the appellant insofar as the applicability of Section 17(1A) of the 1908 Act is concerned, since the said provision, read in conjunction with the amended Section 53A of the Act of 1882, as construed in the light of *Balbir Singh Maini's case (supra)*, is restricted to the operation of Section 53A of the Act of 1882 alone and cannot apply to an assertion of title on the strength of the document by way of a suit.

22. As held by the Hon'ble Apex Court in *Balbir Singh Maini's case (supra)* as well, Section 53A affords a shield by way of defence to any action taken on the strength of title or interest in respect of a property and cannot operate in respect of a plaint, when an agreement-in-question is sought to be relied on as a sword and not as a shield.

23. Section 53A of the Act of 1882 specifically provides that where any person contracts to transfer for consideration any immovable property by writing, then notwithstanding, where there is an instrument of transfer, that the transfer has not been completed in the manner prescribed thereof by the law for the time being in force, the transferee or any person claiming under him shall be debarred from "enforcing against the transferee and persons claiming under him", any right in respect of the property of which the transferee has taken or continues in possession.

24. Thus, the above logic, that Section 53A of the 1882 Act can only be invoked as a defence and not to positively



assert title in a suit, is strengthened all the more by the very language used in Section 53A of the Act of 1882.

25. In the present case, an agreement has sought to be relied on by the plaintiff as a sword and not a shield or a defence.

26. Hence, neither Section 17(1A) of the 1908 Act nor Section 53A of the Act of 1882 is applicable.

27. However, from certain clauses of the development agreement (which is annexed to the stay application), such as Clauses, 3, 12 and 15, we find that an arguable case has been made out as to transfer of title having been effected by the said document *in praesenti* with regard to the developers' allocation of the subject property, which might bring the agreement-in-question within the fold of Section 17(1)(b), even if not Section 17 (1A), of the 1908 Act.

28. In the event it is ultimately held that the agreement is indeed governed by the said provision, the consequential mandatory requirement of registration of the document, as argued by the appellants, has also to be attracted, thereby putting a terminus to the entitlement of the respondent to claim rights on the strength of the unregistered agreement, since the statutory time-limit for registration under Section 23 of the 1908 Act is already over.

29. Also, in such case, the effect of non-registration as enumerated in Section 49 of the 1908 Act is required to be considered, which provision prevents any title from passing on the strength of such unregistered document, more so



since the suit is not couched in the form of a suit for specific performance, in which event, the proviso to Section 49 might have provided the respondent with a breather.

30. Hence, the appeal is required to be heard on the question as to whether the aforesaid clauses of the development agreement debar the plaintiff/respondent from claiming any right or obtaining any injunction on the strength of the said agreement, which is unregistered.

31. On the prayer of the respondent, the appeal be posted for hearing under the same heading along with the connected stay application tomorrow (14.01.2026).

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