



2025:CHC-OS:181-DB

**IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
IN APPEAL FROM AN ORDER PASSED IN ITS ORDINARY ORIGINAL
CIVIL JURISDICTION**

**The Hon'ble Mr. Justice Sabyasachi Bhattacharyya
And
The Hon'ble Mr. Justice Uday Kumar**

**A.P.O.T. No. 223 of 2025
C.S.O.S. No. 4 of 2025
IA NO: GA 1 of 2025**

**Kalishankar Radhey Shyam Trust and Others
Vs.
Jayshree Wadhawa**

For the appellants : Mr. Anirban Ray, Sr. Adv.,
Mr. Debdut Mukherjee,
Mr. Nirmalya Dasgupta,
Ms. Naisanjana Ghosh ... Adv.

For the respondent : Mr. Suman Dutt, Sr. Adv.,
Mr. Rupak Ghosh,
Mr. Dwaipayan Mallik,
Ms. Nilanjana Adhya,
Ms. Tanvi Luhariwala,
Ms. Ruchika Dhenuka,
Mr. Kailash Denuka ... Advs.

Heard and Reserved on : 10.09.2025

Judgment on : 17.09.2025

Sabyasachi Bhattacharyya, J.:-

1. The present appeal has been preferred against an order dated August 1, 2025, whereby an *ad interim* injunction was granted restraining the



defendants/appellants in an Originating Summons from transferring, alienating, dealing, selling, encumbering or parting with any of the assets including the amounts lying in the bank accounts and the fixed deposits, which are the subject matter of the proceeding, till August 22, 2025.

2. The court is apprised that the said ad interim order was subsequently extended, challenging which another appeal has been preferred, which is now pending before the regular Bench, while the present appeal has been assigned to us.
3. The learned Senior Advocate appearing for the appellants argues that the injunction order was passed in connection with Originating Summons (for convenience, hereinafter referred to as “OS”) issued under Chapter XIII of the Original Side Rules of this Court. By taking the court through different provisions of Chapter XIII, it is argued that the same does not contemplate a regular adjudication akin to a civil suit but is a proceeding of summary nature.
4. Rule 1 of Chapter XIII provides that OS may be taken out for such relief of the nature or kind following, relating to the determination (without an administration of the estate of trust) of the questions or matters as stipulated therein. Clauses (a) to (g) of the same envisage adjudications in the nature of declaration.
5. Rule 18 of Chapter XIII provides that the Judge hearing an OS may, where he thinks fit, adjourn the same into Court for hearing and argument and where it appears to him that the matters in respect of



which relief is sought cannot be disposed of in a summary manner, may refuse to pass any order on the summons, may dismiss the same and refer the parties to a suit in the ordinary course.

6. Thus, the learned Senior Advocate appearing for the appellants argues that orders affecting the rights of parties, if any, can be passed in connection with an OS only upon the summons being served and upon hearing the defendant.
7. It is next contended that although Rule 17 provides that where parties do not agree to the correctness to the facts set forth in the affidavit, the Judge may order the summons to be supported by evidence and may give directions as he may think just for the trial of any questions arising thereout, such adjudication comes only at the stage of hearing of the summons and is focused on the questions on which determination can be sought under Rule 1 or Rule 2.
8. Hence, the learned Senior Advocate submits that there is no scope of grant of any ad interim relief touching the rights of the parties prior to hearing of the parties on summons being served.
9. The learned Senior Advocate further argues that the learned Single Judge, while passing the impugned order, placed reliance on *State Bank of India v. Mohuragang & Gulam Tea Estate & Anr.*, reported at 1988 SCC OnLine Cal 124, by observing that in the said case, the learned Single Judge had granted an interim order in the OS suit, which was duly confirmed by the Division Bench. However, it is submitted that such finding is perverse, inasmuch as the Division



Bench, in the said case, did not confirm the order of the learned Single Judge; on the contrary, the appeal against the same was allowed on the ground of non-maintainability of the OS. By placing further reliance on the said report, the learned Senior Advocate argues that the proposition laid down therein is contrary to the submissions of the plaintiff/respondent. It was held therein, *inter alia*, that questions of fact ought not to be dealt with by way of an OS and that this mode of procedure is better to decide matters which are not of an involved nature and not questions which may require considerable discretion.

10. If certain amount of evidence is involved, the Division Bench held that it would be inexpedient to deal with the same in an OS. Unless pure questions of law were raised, the questions ought not to be raised, agitated and dealt with under an OS, as per the cited judgment.
11. The learned Single Judge also relied on an order dated August 29, 2024 in CSOS/8/2024 [*Shekhar Guha and Anr. vs. Shyamali Basu and Ors.*], passed by the same learned Single Judge granting injunction in connection with an OS suit. However, it is argued that the said order does not lay down any proposition of law.
12. The learned Senior Advocate for the plaintiff/respondent controverts the submissions made by the appellants and argues that Rule 1 of Chapter XIII clearly contemplates “reliefs” to be granted on the determination of the questions as mentioned therein. By placing particular stress on the terms “relief” and “matters”, it is argued that



the determination under Chapter XIII is not confined to mere declarations.

- 13.** It is argued that OS is one of the modes of service of summons and does not determine the character of the suit itself. In essence, it is argued, it is a suit which is initiated by OS. In support of such proposition, the learned Senior Advocate for the plaintiff/respondent relies on Rule 20 of Chapter XIII, which provides that a decree shall be drawn up on any order being passed in an OS proceeding. Rule 20 further provides that the Judge may pronounce such judgment “as the nature of the case shall require”, thereby indicating the wide range of reliefs which can be granted in such a proceeding. Rule 21 provides for issuance of special directions touching the carriage or execution of such a decree, which further indicates that, for all practical purposes, the proceeding initiated by OS is a suit where a decree can be passed which is enforceable in nature.
- 14.** The learned Senior Advocate next argues that the court always has the power to grant protection at the ad interim stage in aid of the final reliefs in the proceeding. Since a composite reading of Rules 18 to 21 of Chapter XIII indicates that the court has the discretion, upon service of OS, to grant reliefs as the case may require, the learned Single Judge, in the present case, was justified in granting ad interim protection in order to preserve the property in aid of the final relief.
- 15.** It is argued that in the event ad interim injunction was not granted, the proceeding would run the risk of being rendered infructuous.



16. The learned Senior Advocate takes the court through the concerned trust deeds which provide for devolution of trusteeship on the heirs of the trustees. It is argued that one of the questions formulated before the court is whether juristic entities (companies) can come within the contemplation of trustees, the answer to which is a foregone conclusion, since only biological entities can have “heirs”.
17. The learned Senior Advocate highlights that there is wide scope of grant of relief in OS suits, akin to a summary suit. As such, it is contended that the learned Single Judge was justified in passing the impugned order.
18. The primary issue which falls for consideration before this court is whether the learned Single Judge acted within jurisdiction in issuing ad interim order of injunction in connection with an OS suit.
19. Before entering into such question, the scope of the OS in the present case is required to be looked at. Neither the OS nor the supporting affidavit includes any prayer portion or seeks any relief directly touching upon the corporeal rights of the parties in respect of any property – movable or immovable.
20. The “reliefs” sought are the determination on the following questions and/or matters:
 - A. *Whether clauses 2 and 3 at pages 14 and 15 of the said Trustee Deed gives the right to the Trustee to appoint non-living persons/entities as Trustees in place and stead of living persons mentioned in the said Trust Deed?*



B. *Whether clause for male primogeniture as mentioned in clause 2 at pages 14 and 15 of the said Trust Deed is valid and legal or can be given credence to albeit being contrary to judicial precedence and principles of Hindu Law?*

C. *Whether the appointment of two companies, namely, Wadhwa Endowment Management Private Limited and Jerambhai Management Services Private Limited as Turstees by Gordhandas Wadhwa and Damodardas J. Wadhwa by Deeds are valid and operative and whether these companies be allowed to act as Trustee in respect of the said Trust?*

D. *Whether an order to restrain the companies, namely, Wadhwa Endowment Management Private Limited and Jerambhai Management Services Private Limited from acting as Trustees of the said Trust till the disposal of the present Originating Summons suit, can be passed?*

E. *Whether an order to appoint a suitable person as Receiver over the assets and properties of the Trust, who would oversee the entire functioning of the said Trust being “Kalishankar Radhey Shyam Trust” by the Board of Directors of the said companies till the disposal of the instant Originating Summons suit, can be passed?*

F. *Whether an order to restrain the said companies from transferring and/or alienating and/or dealing with and/or selling and/or encumbering and/or parting with any of its assets, jewelleries and/or money kept in savings bank account and fixed deposits till the disposal of the instant Originating Summons suit, can be passed?*



G. *Whether an order to direct the said companies, namely, Wadhwa Endowment Management Private Limited and Jerambhai Management Services Private Limited to disclose on affidavit the current assets of the said Trust before this Hon'ble Court, can be passed?*

- 21.** The plaintiff/respondent contends that the reliefs primarily come within the ambit of Clause (g) of Rule 1 of Chapter XIII.
- 22.** In order to examine the scope of exercise of jurisdiction in an OS proceeding, the scheme of the Original Side Rules of this Court is to be looked into.
- 23.** Chapter VIII deals with writ, summons and process in respect of a regular civil suit, which provisions are embedded in the midst of other provisions in the Rules in respect of regular suits. Rules 5 and 6 of Chapter XII pertain to summary suits. Rule 6 has since been deleted by Notification No. 74 published in the Calcutta Gazette, Part-I, dated July 28, 1977. The amended Rule 5 stipulates that the provisions of the Code of Civil Procedure and the procedure laid down therein relating to summary suits under Order XXXVII will apply. Chapter XII itself deals with commercial suits, summary suits and suits by indigent persons.
- 24.** Chapter XIII A, on the other hand, deals with summary procedure in suits to recover debts or liquidated demands or for immovable property. Rule 1 of Chapter XIII A specifies the nature of suits in which such summary procedure is applicable.



25. Thus, where the Original Side Rules intend to do so, it specifically provides for summary procedure in respect of regular civil suits.
26. Chapter XIII, however, does not deal with suits of a regular nature but is captioned “Originating Summons”. Although traditionally numbered as suits, the nature of proceedings in case of an OS is markedly different from a regular civil suit. The adjudication in OS proceedings is centred around Rules 1 and 2, which specify the nature of such adjudication. Whereas Rule 2 provides that a person may apply for and obtain an order for the administration of the estate of the deceased, administration of the trust or for discharge of executor, administrator or surety and refund of security deposit, if any, Rule 1 is couched in a different language. It is not an “order”, unlike Rule 2, which is envisaged in Rule 1, but the “determination of questions or matters” as stipulated in Clauses (a) to (g) therein. Rule 1 is quoted for convenience hereinbelow:

“1. Who may take out originating summons and in respect of what matters.—*The executors or administrators of a deceased person, or any of them, and the trustees under any instrument or any of them, and any person claiming to be interested in the relief sought as creditor, legatee, heir, or legal representative, or as beneficiary under the trusts of any instrument, or as claiming by transfer, or otherwise, under any such creditor or other person as aforesaid or the surety of an executor or administrator may take out, as of course, an originating summons, returnable before the Judge sitting in Chambers, for such relief of the nature or kind following, as may by the summons be specified, and the circumstances of the case may require (that is to say), the determination without an administration of the estate of trust of any of the following questions or matters :—*

- (a) any question affecting the rights or interest of the person claiming to be creditor, legatee, heir, or legal representative, or beneficiary;*



- (b) the ascertainment of any class of creditors, legatees, legal representatives or others;*
- (c) the furnishing of any particular accounts by the executors, administrators, or trustees, and the vouching (where necessary) of such accounts;*
- (d) the payment into Court of any moneys in the hands of the executors, administrators or trustees;*
- (e) directing the executors, administrators or trustees to file any account and vouch the same or to do, or abstain from doing, any particular act in their character as such executors, administrators or trustees;*
- (f) the approval of any sale, purchase, compromise or other transaction;*
- (g) the determination of any question arising in the administration of the estate or trust."*

27. Rules 1 and 2, in fact, supplement each other, inasmuch as Rule 2 covers the administration of the estate of trusts and a deceased person whereas administration of the estate of trust is specifically excluded from determination under Rule 1.

28. The term "such relief" in Rule 1 is qualified by the expression "of the nature or kind following", where after such relief has been confined to the determination of the questions or matters as stipulated in Clauses (a) to (g). The very nature of the language in which the said Clauses are couched indicate that the determination of the questions or matters are in the nature of declarations. Although Clause (c) envisages furnishing of particular accounts, Clause (d) payment of moneys and Clauses (e) and (f) directions on the executors from doing any particular act in their capacity as executors, administrators or trustees and the approval of any sale, purchase, etc., respectively, the said Clauses are circumscribed by the overarching prelude in Rule 1, confining such



exercise to the “determination”, without administration of the estate of the trust, of the questions or matters following thereafter.

- 29.** Seen in such perspective, it cannot be said that OS suits under Chapter XIII can be equated with a regular civil suit. Even if in certain categories of suits summary proceeding is permitted, nonetheless, the suit retains the character of a regular civil suit, as exemplified by Chapter XII of the Original Side Rules of this Court.
- 30.** The above view is strengthened by Rule 23 of Chapter XIII, which specifically excludes the operation of Order II Rule 2 of the Code of Civil Procedure. Such exclusion would not be incorporated in Chapter XIII if all reliefs, as can be claimed in a regular civil suit, could be claimed in an OS proceeding.
- 31.** Rule 2 of Order II of the Code precludes the plaintiff from suing subsequently in respect of claims which have been omitted in a suit. Thus, unless the nature of the reliefs to be granted under Rule 1 of Chapter XIII was in the nature of a mere declaration without other reliefs, there would be no necessity of excluding Order II Rule 2. If all types of reliefs as in a regular suit could be claimed in an OS, the rigours of Order II Rule 2 of the Code would definitely apply, because the plaintiff would then have the option of omitting particular reliefs, although arising out of the same cause of action. Only because the range of reliefs available in an OS are truncated and restricted to declaratory reliefs, given the shape of a decree by dint of Rules 20 and 21 of Chapter XIII, and a plaintiff runs the risk of being relegated to a



regular suit if complicated questions of fact requiring elaborate evidence are involved, there is the necessity of excluding the operation of Order II Rule 2 of the Code to protect the plaintiff from being barred by such provision if it is relegated to a regular suit, where the plaintiff can claim other reliefs along with declaratory reliefs.

- 32.** The very scheme of things in the Original Side Rules is designed in such a manner that in cases where an Originating Summons is issued, and upon hearing, questions as contemplated therein are determined and a declaratory decree is passed, the parties, in case of further disputes, would be relegated to a regular suit, where other claims could be made.
- 33.** In the alternative, if the Judge is of the opinion that the reliefs sought cannot be disposed of in a summary manner, in terms of Rule 18 of Chapter XIII, he may refuse to pass any order on the summons, may dismiss the same and refer the parties to a suit in the ordinary course. The expression “refer the parties to a suit in the ordinary course”, by necessary implication, means that an OS proceeding is not one.
- 34.** Under Rule 20 of Chapter XIII, the Judge may pronounce such judgment, “as the nature of the case shall require”, and no further. The “nature of the case” is determined by Rules 1 and 2, which are the guiding lights of Chapter XIII in its entirety.
- 35.** As per Rule 21, the Judge may give any special directions touching the carriage or execution of a decree which is drawn up under Rule 20 on the basis of an order passed. Merely because a “decree” and



“execution” thereof is contemplated, however, does not mean that reliefs other than declaration can be granted in an OS. It may be kept in mind that even declaratory decrees can be executed, the modes of which are amply provided in Order XXI of the Code of Civil Procedure.

- 36.** Rule 17 of Chapter XIII empowers the Judge issuing an OS, where the parties do not agree to the correctness of the facts set forth in the affidavit, to order the summons to be supported by such evidence as he thinks necessary and give such directions as he may think just for the trial of any question arising thereout. The Judge may also make amendment in the affidavit and summons as he deems to be necessary to make them accord with the existing state of facts, so as properly to raise the questions-in-issue between the parties.
- 37.** However, the power to pass directions and direct evidence, and to amend the affidavit and summons, operates within the limited conspectus of Chapter XIII, as governed by the questions to be determined under Rule 1 and orders to be passed under Rule 2. Hence, such powers under Rule 17 have to be construed in the light of the scope of adjudication in Chapter XIII itself and *per se*, does not expand the scope of such adjudication. The “evidence” and “directions” contemplated in Rule 17 have, thus, to operate within the framework of adjudication under Chapter XIII.
- 38.** There are two options left to the Judge issuing OS, both of which arise only upon service of summons and at the stage of hearing.



- 39.** Under Rule 18, where it appears to the Judge that the matters in respect of which relief is sought cannot be disposed of in a summary manner, he may refuse to pass any order and may dismiss the summons and refer the parties to a suit in the ordinary course.
- 40.** On the other hand, under Rule 20, where the Judge is of the opinion that the matter is fit to be dealt with on an OS, he may pronounce such judgment “as the nature of the case shall require”, in which event any order made by him shall be drawn up as a decree of the court.
- 41.** Hence, the exercise of discretion by the Judge regarding whether the matter is fit to be dealt with on an OS and to pronounce judgment is circumscribed by the “nature of the case”. Therefore, the scope of such exercise relates back to the foundational powers as conferred under Rule 1 or Rule 2 of Chapter XIII, whichever is applicable.
- 42.** In the present case, admittedly, Rule 1 of Chapter XIII has been resorted to and, as such, the scope of consideration is confined to orders in the nature of declaratory decree on the said questions.
- 43.** It is well-settled that interim reliefs of a nature greater than the final relief or beyond the scope of the final relief cannot be granted in any suit/proceeding or adjudicatory process. Hence, in the instant case, by issuance of an ad interim order of injunction, the learned Single Judge has traversed beyond his jurisdiction and touched the corporeal rights in respect of tangible immovable and movable properties which, *stricto sensu*, fall outside the ambit of determination of questions and matters within the contemplation of Rules 1 of Chapter XIII of the Original Side



Rules. The scope of Rule 1, it is reiterated, is confined to the determination of the questions or matters stipulated in Clauses (a) to (g) “without an administration of the estate of trust”. Hence, such power is limited to the determination of the questions and not to grant of reliefs touching the estate of the trust.

44. In *State Bank of India (supra)*¹, contrary to the observations of the learned Single Judge in the present impugned order, the ad interim injunction granted by the learned Single Judge there was set aside by the Division Bench. However, such setting aside was on the ground that there were inconsistencies between the OS and the affidavit in support thereof, without expressing any opinion as regards the grant of interlocutory relief.

45. A scrutiny of excerpts from the said report would be fruitful in the present context. In paragraph no. 3 of the judgment, the Division Bench observed that Chapter XIII of the Original Side Rules of this Court provide a special procedure by way of Originating Summons which had its origin in English Rules of Supreme Court. This, it was held, is undoubtedly a suit in the Original Side, but cannot be equated with it, since under the Rules, questions are framed for the purpose of being answered by this Court and the Court in its turn considers as to whether the questions are within the ambit of the Rules of the Original

1. *State Bank of India v. Mohuragang & Gulam Tea Estate & Anr.*, reported at 1988 SCC OnLine Cal 124



Side and can be conveniently dealt with by way of an Originating Summons.

46. In paragraph no. 31 of the report, while discussing an English decision authored by Astbury, J. in *Leicester Corporation's case*, the Division Bench noted that in the event of there being a question of fact, the matter ought not to be dealt with by way of an Originating Summons.
47. In paragraph no. 32, while considering another Chancery decision, it was noted that it would be very wrong to decide the questions regarding priority of mortgages in those informal proceedings. This mode of procedure (Originating Summons), it was held, is better to decide matters which are not of an involved nature, and not questions which may require considerable discretion, for which purpose Originating Summons were observed to be utterly inappropriate.
48. The Division Bench, in paragraph no. 35 of the report, further observed that questions (b), (c) and (d) as raised by the plaintiff therein, on a close scrutiny, involved certain amount of evidence which, in view of the court, would be inexpedient to deal with in an OS.
49. In paragraph no. 36, it was further observed that OS is available to proceedings which are not of an involved nature and on which there would hardly be any scope for any oral evidence. While it was held to be true that the court has power to have even oral evidence, in the view of the Division Bench, the same ought not to be extended to any suit under Chapter XIII, otherwise the Code of Civil Procedure would have to be given a complete go-bye. Needless to say, the Code of Civil



Procedure, it was held, prescribes certain forms of decree which are not available to an OS. It was highlighted that the questions raised therein were not pure questions of law but of fact which ought not to be raised, agitated and dealt with under an OS. The Division Bench expressed the opinion that OS under Chapter XIII was not the proper mode in such cases and such disputes cannot be adjudicated only upon interpretation by way of a construction of the deed-in-question but were obviously matters of fact. Quoting Daniel's Chancery Practice (8th Edition, Vol. I), the Division Bench observed that the object of the order is to enable the court to decide questions of construction where the decision will settle the litigation between parties – not questions which if decided one only will do so.

- 50.** Thus, from a comprehensive reading of the judgment cited before the learned Single Judge, it is palpably clear that the scope of an OS suit, unlike a regular civil suit, is not only of a summary nature but confined to pure questions of law. For such purpose, to determine the questions involved, the court has the power to direct further evidence by affidavit and to pass such directions with regard to trial or mould the affidavit and summons in accord with the existing state of facts, but for the limited purpose of raising the question/issue between the parties within the contemplation of Rule 1. Rule 17 does not expand the scope of adjudication beyond Rules 1 and 2, which are the determinants in that regard.



- 51.** The learned Single Judge also referred to an order dated August 29, 2024, passed by the same learned Single Judge. However, the said judgment was not relied on as such in the impugned order, nor was any proposition of law laid down therein.
- 52.** It may also be noted that no relief in the nature of injunction or, for that matter, any relief touching the estate of the trust or any property, movable or immovable, has been sought by way of reliefs in the Originating Summons or the supporting affidavit in the present case. Also, no interim application was filed in connection with the proceeding before the learned Single Judge, nor was any final or ad interim relief in the nature as granted by the impugned order sought by the plaintiff/respondent at all.
- 53.** In fine, we are of the considered opinion that the learned Single Judge erred in law in exercising jurisdiction not vested in him by passing an order of injunction touching the administration of the estate of the trust as well as the corporeal rights in property, movable and immovable, which is beyond the scope of Originating Summons under Chapter XIII of the Original Side Rules of this Court, particularly in the context of Rule 1 thereof, which has been invoked by the plaintiff/respondent.
- 54.** Accordingly, A.P.O.T. No. 223 of 2025 is allowed on contest, thereby setting aside the impugned judgment dated August 1, 2025 passed in C.S.O.S. No. 4 of 2025.
- 55.** Consequently, GA 1 of 2025 stands dismissed as well.



- 56.** There will be no orders as costs.
- 57.** Urgent certified copies, if applied for, be supplied to the parties upon compliance of due formalities.

(Sabyasachi Bhattacharyya, J.)

I agree.

(Uday Kumar, J.)