Form No.J(2)

IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
Appellate Side

Present : The Hon'ble Mr. Justice Sabyasachi Bhattacharyya
&
The Hon'ble Mr. Justice Sandip Kumar De

FMAT 220 of 2026
with
CAN 1 of 2026
with
CAN 2 of 2026

Anil Kaushik and Anr.
Vs.
Sourabh Khemani

For the appellants	:	Mr. Rachit Lakhmani, Ms. Devyani Ashra, Mr. Piyush Kumar, Advs.
For the respondent	:	Mr. Souradipta Banerjee, Mr. Tanuj Kakrania, Ms. Shreya Goenka, Ms. Surabhi Mehta, Advs.
Heard on	:	September 7, 2026.
Judgment on	:	September 7, 2026.

<u>Sabyasachi Bhattacharyya, J.</u>:

1. The supplementary affidavit to the condonation application, filed today, be kept on record.

2. The affidavit-in-opposition filed on behalf of the respondent to the condonation application and the supplementary affidavit is also kept on record.

3. On the prayer of learned counsel for the respondent, leave is granted to the respondent to file the Hon'ble Second Judge's copy of the affidavit-in-opposition during the course of the day.

4. For the time being, the court proceeds on the basis of the photocopy of the First Judge's copy of the affidavit-in-opposition.

5. Learned counsel for the appellants submits that in view of the urgency involved, the appellants do not seek to use a reply to the affidavit-in-opposition but at the same time makes it clear that none of the allegations made in the opposition are admitted by the appellants.

6. From the explanation for the delay of about 30 days in preferring the appeal, as furnished in the condonation application and the connected supplementary affidavit, it transpires that the learned Advocate who was entrusted with preferring a challenge against the impugned order was suffering from an acute episodic severe back pain and was medically advised to take rest.

7. A medical certificate has been produced for the relevant period, which indicates that the learned Advocate had a radiating acute tenderness over L4, L5 in her spinal cord.

8. It is contended that although the said learned Advocate had attended a few pre-existing matters on isolated occasions, those were principally through virtual hearings.

9. Physical appearances were made only few and far between and that the learned Advocate was not able to continue with her ordinary professional work otherwise, unless there were extreme exigencies in matters which had already been entrusted to her.

10. Learned counsel for the respondent, by placing reliance on the affidavit-in-opposition, submits that several instances of physical appearance of the concerned learned Advocate in connection with other matters during the relevant period, before different courts and forums, have been detected, which have not been controverted by the appellants.

11. That apart, it is submitted that in the application for condonation of delay as well as the supplementary affidavit, no satisfactory explanation has been furnished as to what prevented the certified copy of the impugned order from being applied for within the limitation period.

12. Learned counsel submits that thus, the very premise of the explanation for the delay sought to be pleaded in the condonation application and the supplementary affidavit is belied by the aforesaid circumstances.

13. On a perusal of the supplementary affidavit, we find that as per the same, after the order dated April 24, 2026 (impugned order) was passed, the appellants were advised to prefer an appeal.

14. Thus, the appellants had already entrusted the learned Advocate concerned within a reasonable period from the order being passed.

15. From the nature of the ailments suffered by the learned Advocate during the relevant period, as borne out by the medical certificate annexed with the supplementary affidavit, we are sufficiently satisfied that she might not have been in a position to carry on with her regular professional work.

16. Although we find that admittedly the said learned Advocate had appeared on sporadic occasions physically before different courts/forums, that itself does not necessarily mitigate the acute pain which she was suffering, which is evident from the medical certificate itself.

17. The fact that the said learned Advocate, under compulsion and from her sense of duty, had to attend certain pre-entrusted matters, is somewhat different from taking steps to prefer a new appeal.

18. Thus, we find sufficient explanation for the delay being made out.

19. Even otherwise, as rightly contended by learned counsel for the appellants, even if we were to proceed on the premise that the learned Advocate was not diligent enough, in view of the diligence of the appellants themselves having been pleaded sufficiently, there is no reason as to why the appellants should be unduly penalized for the negligence, if any, of their learned Advocate.

20. We also do not find any mala fides *per se* in the delay of merely 38 days in preferring the appeal, more so since the learned Advocate who was originally entrusted with the matter has been retained in the matter by the appellants till date and no attempt has been made to

engage a new Advocate and thereafter to castigate the erstwhile Advocate, which methodology is often resorted to by litigants.

21. Thus, we are sufficiently satisfied that the delay was bona fide in nature and the same ought to be condoned in the circumstances of the case.

22. Accordingly, CAN 1 of 2026 is allowed without any order as to costs thereby condoning the delay in preferring FMAT 220 of 2026.

23. The appeal is admitted and is being taken up for hearing in view of the short conspectus of the same.

24. By the impugned order, in a suit for defamation filed by the plaintiff/respondent, the learned Trial Judge has granted injunction restraining the defendants/appellants from sending e-mails to third parties who are not directly involved with the concerned business, raising illegal allegations against the plaintiff regarding management of the business while he was in charge of running those businesses, till disposal of the suit, at the same time inserting a rider that nothing in the said order shall prevent the defendants/appellants to make genuine complaint regarding illegal activities of the company before the competent authorities established by law.

25. Learned counsel appearing for the appellants argues that the learned Trial Judge completely overlooked the 'Bonnard Principle', as reiterated in *Fraser vs. Evans [1969] 1 Q.B. 349*, by dint of which, until it is clear that an alleged libel is untrue, it is not clear that any right at all has been infringed. In order to grant an interim injunction in a case

of defamation, it was held, the Court ought not to pass such an order unless the defence of justification by the defendants was certain to fail at trial level.

26. In support of such contention, learned counsel cites *Tata Sons Limited vs. Greenpeace International & Anr.* reported at *2011 SCC OnLine Del 466*, where a learned Single Judge of the Delhi High Court reiterated the Bonnard Principle in case of defamations.

27. Learned counsel places reliance on certain portions of the impugned order where the learned Trial Judge went on to observe that at this stage it is not possible for the Court to come to a conclusion whether the plaint allegations are genuine or not, which will be possible only at the conclusion of the trial.

28. Secondly, learned counsel for the appellants argues that in the two allegedly defamatory e-mails, legal infractions on the part of the plaintiff during his tenure with a company by the name of CyberCorp Limited were alleged, referring to a legal notice.

29. It is further submitted that applications alleging oppression and mismanagement in respect of the said company at the behest of the plaintiff/respondent have also been filed before appropriate authorities. Thus, the defence of truth is available to the defendants/appellants, unless proved not to be available in trial.

30. Thirdly, it is argued that the e-mails were not "public" statements made to the world at large or in any media or social media but specifically directed to officials of the company, CyberCorp Limited and

shareholders thereof and/or to persons directly connected to the said company, who have a direct interest in the affairs of the company.

31. Learned counsel points out that the defendant/appellant no. 1 is himself a 10 per cent shareholder in CyberCorp Limited, whereas the plaintiff/respondent held 90 per cent thereof, before leaving the said company and parting with his interests therein. On the other hand, the defendant/appellant no.2 was a 50 per cent share holder in one Sundyne Technologies Private Limited, a company which, according to the defendants, was the victim of the alleged actions of the plaintiff.

32. Learned counsel appearing for the plaintiff/respondent, in reply, argues that the e-mails concerned were sent not only to the Directors or shareholders of the company CyberCorp Limited but also to third parties otherwise unconnected with the company, thereby directly attempting to denigrate the plaintiff in the eyes of the business world and strangers to the said company who might have transactions with CyberCorp Limited or otherwise having dealings with the company.

33. Learned counsel further points out that the plaintiff has already resigned from CyberCorp Limited and has been sought to be maligned by making vicious comments in the offending e-mails, particularly in the second e-mail in the series dated January 31, 2026.

34. Learned counsel further argues that by the impugned order, the learned Trial Judge has merely restrained the defendants/appellants from sending e-mails to third parties who are not directly involved with the concerned business and, as such, the defendants/appellants

cannot be said to have been adversely affected by the said order. In any event, it has further been observed by the learned Trial Judge that the defendants will be at liberty to make genuine complaint regarding the illegal activities of the company before the competent authorities established by law, thus taking care that the legal rights of the appellants are not precluded or infringed in any manner whatsoever.

35. Upon a thorough perusal of the materials before us, we find that the learned Trial Judge, in several portions of the impugned order, has categorically recorded that at this stage it is not possible for the court to come to any conclusion as to whether the allegations made in the offending e-mails are genuine or not, which need to be enquired at the time of conclusion of the trial.

36. It is to be taken note of that, unlike other matters, suits for defamation have a separate niche insofar as grant of injunctions is concerned. The Bonnard Principle evolved in English law, as laid down in *Bonnard vs. Perryman [1891] 2 Ch. 269* and reiterated subsequently in *Fraser vs. Evans* (supra), has been adopted and followed by Indian Courts time and again. Thus, in a suit for defamation, apart from the three cardinal tests of *prima facie* case, balance of convenience and inconvenience and irreparable injury, the Bonnard Principle is squarely attracted. By application of the said principle, no injunction can normally be granted in defamation suits unless the court comes to a positive conclusion on the basis of the materials before it that the

defence of justification by truth is not available to the defendant and that the defendant is certain to fail on such count at the stage of trial.

37. Until it is clear that an alleged libel is untrue, it is not clear that any right at all has been infringed. Indian Courts, following the English principle laid down in *Bonnard* (supra), have continuously reiterated the importance of leaving free speech unfettered, which has been held to be a strong reason in cases of libel for dealing most cautiously and warily with the grant of interim injunctions.

38. In the above backdrop, we find that both the alleged offending e-mails in the instant case, respectively dated January 16 and January 31, 2026, are in the nature of legal notices and/or reiteration of the allegations made in legal notices. For example, in the first e-mail, after laying out the allegations of legal infractions against the plaintiff, in the conclusion thereof, it has been stated that the notice was being issued without prejudice to all rights, remedies and proceedings available to the company in law and equity (by company, meaning Sundyne Technologies Private Limited).

39. In the subsequent e-mail dated January 31, 2026, an actual legal notice of even date was actually attached and referred to and the contents thereof have virtually been reiterated in the e-mail.

40. Although certain expressions such as "misappropriate and steal proprietary software source codes and confidential technical material developed by Sundyne" and "amounting to a daylight attempt at looting the company's intellectual property by a director himself" have been

used in the second e-mail, those expressions have been used in the specific context of alleged infractions of corporate and criminal law.

41. Thus, it is the alleged unlawfulness of the acts of the plaintiff which has been alleged in the e-mails.

42. The legality of such actions of the plaintiff and/or the veracity of the allegations can only be decided conclusive by legally competent forums, including the NCLT (National Company Law Tribunal), where at present applications alleging oppression and mismanagement are pending.

43. However, the civil court, before grant of injunction, has to record its satisfaction in no uncertain terms that it is convinced that the defence of justification of the allegations and unlawfulness of the plaintiff's actions are certain to fail at the trial level. Thus, as opposed to the general concept of *prima facie* case in an ordinary litigation insofar as injunction is concerned, where the veracity of the plaintiff's legal rights are to be primarily established, the concept is turned on its head in a defamation suit, where it is the burden of the plaintiff to satisfy the court beyond doubt that the defence of justification taken by the defendants is certain to fail at trial.

44. In the present case, the offending e-mails are one notch lower than direct allegations, inasmuch as such allegations squarely pertain to lawfulness and legality of the actions of the plaintiff in the context of corporate law, acquiring the character of a legal notice.

45. In such view of the matter, it cannot be said that the learned Trial Judge was justified in grant of injunction without at all touching upon the Bonnard Principle or recording satisfaction in that regard. On the contrary, the learned Trial Judge has recorded that it is not possible for the court to come to any conclusion as to whether the allegations made by the defendants are genuine or not at this stage before the conclusion of the trial.

46. Even otherwise, the defendants/appellants seek to take a stand that the addressees of the e-mail are all in some way or the other connected with the concerned company, being CyberCorp Limited.

47. In the plaint or the injunction application, there is no specific disclosure as to what are the capacities of the persons unconnected with the business of CyberCorp Limited, nor has it been categorically identified as to which of the addressees of the e-mails are such unconnected persons.

48. In view of the above, we find that the Court, instead of coming to a categorical *prima facie* finding regarding satisfaction of the Bonnard Principle, granted a blanket injunction restraining the defendants/appellants from sending any e-mail to "third parties" who are not "directly involved" with the concerned business.

49. The learned Trial Judge, by using such expressions, has left it vague and dependent on the perception of the parties as to who are the third parties who are not directly involved with the concerned business. Moreover, the injunction also restrains the appellants from "raising

illegal allegations", while observing in the same breath that the legality or genuineness of the allegations cannot be ascertained at this stage. Thus, the operative part of the impugned order and the findings leading to it are contradictory to each other. Since the Court itself was unsure while passing the impugned order as to the legality of the allegations raised in the offending e-mails, there was no possibility for the court to come to a conclusion that those allegations were certain to fail not only at the conclusion of the trial of the defamation suit but in the pending or impending proceedings which have been taken out or will be taken out against the plaintiff under the appropriate corporate legal provisions.

50. Hence, we find substance in the contention of the appellants that the learned Trial Judge erred in law in misconstruing the parameters for grant of injunction in defamation suits while passing the impugned order.

51. Accordingly, FMAT 220 of 2026 is allowed on contest, thereby setting aside the impugned order bearing Order no. 5 dated April 4, 2026 passed by the learned Trial Judge, Fifth Bench, City Civil Court at Calcutta in Title Suit no. 603 of 2026.

52. Consequentially, CAN 2 of 2026 is also disposed of.

53. We make it clear that all the above observations are tentative in nature, arrived at for the limited purpose of deciding the present appeal, which arises in turn from a temporary injunction order, and

will, in no manner, influence the learned Trial Judge while deciding the main suit.

54. There will be no order as to costs.

55. Urgent Photostat certified copies of this judgment, if applied for, be supplied to the parties upon compliance of requisite formalities.

I agree. (**Sabyasachi Bhattacharyya, J**.)

(**Sandip Kumar De, J**.)

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(sss)