

27.07.2026

Sl. No.: 4

Court No.7

BM

WPA 2396 of 2026

ITC LTD

VS

DALHOUSIE HOLDINGS LTD AND ORS

Mr. S. N. Mookherjee, Sr. Adv.

Mr. Ratnanko Banerji, Sr. Adv.

Mr. Anuj Singh

Mr. Zulfiqar Ali Alquaderi

Mr. Aman Khemka

Mr. Naman Chowdhury

Mr. Yash Singhi

... for the petitioner

Mr. C. A. Sundaram, Sr. Adv.

Mr. Airban Ray

Mr. Abhishek Gupta

Mr. Debrup Bhattacharjee

Mr. Subham Saha

Mr. Steven S. Biswas

Mr. Arjun Ray

Mr. Siddharth Singh

... for the respondent no.1

1. Affidavit of service filed in Court today is taken on record.

2. This revisional application is directed against an order dated July 9, 2026 passed by the learned District Judge, South 24 Parganas at Alipore in Misc. Appeal No.174 of 2026.

3. The opposite party no.1 (hereafter “the opposite party”) has instituted Title Suit No.607 of 2026 before the learned Civil Judge, Senior Division, 1st Court at Alipore, praying, inter alia, for decrees of declaration and injunction. In the said suit the opposite party filed an application seeking temporary injunction under Order 39 Rule 1 & 2 of the Code of Civil Procedure, 1908. The said application was pressed *ex-parte* for ad-

interim reliefs. The learned Trial Court granted *ex-parte* ad-interim injunction against the defendants in the suit on April 30, 2026 and fixed May 20, 2026 as the next date. The said injunction still subsists upon being extended from time to time.

4. The petitioner, who is the defendant no.13 in the suit, has filed an application under Order 39 Rule 4 of the Code praying for vacation of the ad interim order of injunction passed by the learned Trial Court. The said application for vacating the injunction has not yet been heard and it's hearing has been postponed till such time the petitioner produces certain documents in terms of directions passed by the learned Trial Court on June 01, 2026 on the opposite party's application under Order 11 Rule 14 of the Code.

5. On May 20, 2026, the petitioner entered appearance and filed an objection to the opposite party's prayer for extension of the interim order of injunction.

6. The said objection against the extension of injunction order was heard and overruled by the learned Trial Court by the same order dated June 1, 2026 whereby the petitioner was called upon to produce documents under Order 11 Rule 14 of the Code as aforesaid. The ad-interim order of injunction thus stood extended.

7. Feeling aggrieved thereby, the petitioner has approached the learned Appellate Court by filing Misc. Appeal No.174 of 2026.

8. In the said Misc. Appeal the petitioner filed an application praying for stay of the order extending the order of injunction. The said application was taken up for hearing on July 9, 2026 when after hearing the parties the learned Appellate Court refused to stay the order of extension of the ad interim injunction. The matter has been fixed for hearing today i.e. on July 27, 2026.

9. Being aggrieved by the said order dated July 9, 2026, the petitioner has approached this Court by filing the present revisional application.

10. Mr. Mookherjee, learned senior advocate appearing for the petitioner has taken several points to assail the order refusing to stay the order extending injunction as well as the order of extension itself.

11. It has been primarily contended that the order impugned before the learned Appellate Court could not have been passed in the teeth of the provisions of Section 58 of the Indian Trusts Act, 1882 and as such the same must have been stayed. It has been submitted that the learned Trial Court has failed to appreciate the difference between “beneficial interest” and “trust property” as defined under Section 3 of the 1882 Act.

12. Referring to a Judgement of the Hon’ble High Court at Madras, in the case of **S.M. Enayatullah Saheb vs. S. A. K. Jeelani Saheb** reported at **AIR 1942 Madras 136**. Mr. Mookherjee submitted that in terms of Section 58 of 1882 Act a beneficiary is competent to transfer his interest.

13. A judgment of the Hon'ble Supreme Court in the case of **C.I.T., Hyderabad vs. Nawab Mir Barkat Ali Khan Bahadur** reported at **(1975) 4 SCC 360**, was also cited in support of the contention that a beneficiary, competent to contract, may transfer his interest subject to the law for the time being in force, as to the circumstances and extent in and to which he may dispose of such interest.

14. He has taken this Court through the Declaration of Trust executed on August 16, 1961 to indicate that the expression "*Syndicate Members*" would include "*Syndicate Members for the time being of the Syndicate as mentioned*" therein.

15. Clause 1 of the said Deed was pressed to demonstrate that each syndicate member would have exclusive possession of the flat or flats allocated and shall be entitled to exercise all rights incident to such ownership, subject to the restrictions imposed by the syndicate members.

16. Clause 3 of the said declaration of trust was shown to assert that upon dissolution of the syndicate, the trustees would deal with the servient property in such manner as the syndicate members shall direct and shall in relation to such property be bound to comply with the directions of the Syndicate Members.

17. Portions from the Deed of Conveyance dated June 9, 2017 were also shown to contend that only beneficial interest as the beneficiary under the trust had been transferred under the said deed.

18. To sum up, it was submitted that the orders granting injunction and extending the same were contrary to law.

19. It was then submitted that act of the opposite party/plaintiff is contrary to the Deed of Declaration dated August 16, 1961 and that the Trial Court did not consider Clauses 1 and 2 of the said Deed during granting or extending the order of injunction.

20. It was further submitted that the Deed of Declaration does not require the trustee to be a party to the conveyance and that the trustee was acting contrary to the interest of the trust in claiming all the properties as owner thereof. It was next submitted that such act of trust was in direct contravention of the Section 14 of the 1882 Act. It was also contended that the suit has been grossly under valued.

21. Mr. C. A. Sundaram, learned senior advocate appearing for the opposite party no.1 supported the order impugned.

22. It was submitted that the main ad interim order of injunction has not been challenged and that the present revisional application mounts challenge only to a refusal to pass ad interim order of stay on the order of extension of injunction.

23. It is further submitted that the order impugned is not in any manner perverse or arbitrary warranting interference under Article 227 of the Constitution of India.

24. In order to demonstrate that the Conveyances executed in recent past have taken a divergent course in not making the Trustee a party to such conveyances and in the beneficiary claiming to be owner of the trust property, Mr. Sundaram placed portions of Deed of Conveyance dated January 31, 2025.

25. Sections 3 and 13 of the 1882 Act were placed to demonstrate their scope and applications to the present case.

26. It is further submitted that when the matter is returnable before the learned Appellate Court for hearing of the appeal today itself and the injunction order has continued for a few months, there is no reason for this Court to interfere at this stage.

27. Mr. Sundaram submits that the written objection on behalf of the plaintiff is ready and it shall be filed before the learned Appellate Court today.

28. Having heard the learned Senior Advocates appearing for the petitioner and the opposite party, this Court is of the view that since the matter is already fixed before the learned Appellate Court today therefore, it would be proper that the appeal pending before the learned Appellate Court itself be heard out instead of this Court hearing this challenge.

29. Mr. Mookherjee and Mr. Sundaram have both agreed that irrespective of the written objection being filed today hearing of the appeal should commence today. The learned Appellate Court is requested to

complete the hearing today and if it is not possible then preferably within at least a week from date.

30. Although arguments made by the learned senior Advocates appearing for the respective parties have been recorded summarily, it is clarified that this Court has not gone into the merits of the matter and all points are left open to be urged before and decided by the learned Appellate Court without being influenced by the order dated July 9, 2026 which has been impugned in the present revisional application.

31. The Appellate Court would consider the matter on the basis of materials on record and the submission made by the parties irrespective of the opinion formed by the Appellate Court at the *prima facie* stage when the order dated July 9, 2026 was passed.

32. The pendency of the appeal will not prevent the beneficiary of the Trust from taking such steps as may be available to them in accordance with law.

33. With the aforesaid observation C.O. 2396 of 2026 stands disposed of. No costs.

34. Urgent photostat certified copy of this order, if applied for, be supplied to the parties subject to compliance with all requisite formalities.

(Om Narayan Rai, J.)