

**In the High Court at Calcutta
Civil Appellate Jurisdiction
Appellate Side**

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

F.M.A.T. No. 345 of 2026

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CAN 1 of 2026

Narayana Hrudayalaya Limited

-Versus-

Dr. Sujoy Kumar Sanyal and another

For the appellant	:	Mr. Probal Mukherjee, Sr. Adv., Mr. Sohom Sen, Mr. Srinjoy Bhattacharya, Mr. Sohom Sarkar, ... Advs.
For the respondents	:	Mr. Jayanta Kumar Mitra, Sr. Adv., Mr. Anirban Ray, Sr. Adv., Mr. Aniruddha Mitra, Sr. Adv., Mr. Sankarsan Sarkar, Mr. Arjun Kumar Ray, Mr. Anirban Ghosh, Mr. Titas Sasmal, ... Advs.
Heard on	:	07.09.2026
Reserved on	:	07.09.2026
Judgment on	:	29.09.2026

Sabyasachi Bhattacharyya, J.:-

1. The plaintiff/respondent no. 1 is a senior neurosurgeon and independent medical professional, who has been associated with defendant/proforma respondent no. 2, the Rabindranath Tagore International Institute of

Cardiac Sciences, for several years. The said institute is run by the defendant no. 1/appellant-Company, the Narayana Hrudayalaya Limited.

2. The appeal arises out of a suit filed by the plaintiff/respondent no. 1 for specific performance of an alleged oral agreement of November, 2005, pertaining to an arrangement governing the plaintiff/respondent no. 1's professional association with defendant no. 1/appellant, for cancellation of a termination/pre-closure notice dated May 18, 2026, bearing Reference No. NH/RTICS/HR/2026/314 as illegal, invalid, ineffective, and for declaration that an agreement for professional services dated April 2, 2025 was never executed, signed or consented to by the plaintiff and is null and void and be cancelled, as well as for consequential reliefs such as permanent injunction.
3. In connection with the said suit, the plaintiff/respondent no. 1 took out an application for temporary and ad interim injunction restraining the defendants and their agents, etc., from relying upon, enforcing, acting upon or giving effect to an agreement dated April 2, 2025 and the notice dated May 18, 2026 or any similar letter and from preventing the plaintiff/respondent no. 1 from consulting the outdoor patients and also the plaintiff's ingress and egress to the defendant no. 2/Hospital.
4. By the impugned order, learned Trial Judge granted ad interim injunction restraining the defendants as well as all of the employees acting under them from giving effect to or acting upon the purported agreement dated April 2, 2025 and the notice dated May 8, 2026, as well as from creating any disturbances in any manner whatsoever to the

plaintiff/respondent no. 1 in “carrying out his service to the hospital as senior neurosurgeon from all aspects”.

5. Learned senior counsel for the defendant no.1/appellant contends that the impugned order is vitiated by suppression of material facts by the plaintiff/respondent no. 1 with regard to several other agreements which were executed between November, 2005 and the date of the termination notice. By relying on copies of such documents annexed to the stay application filed in the present appeal, it is pointed out that several of those contain the plaintiff's signature.
6. Learned senior counsel next relies on an e-mail sent by the plaintiff/respondent no. 1 in the month of May, 2026, wherein the plaintiff conceded to the notice of termination/pre-closure of contract, despite denying the same in the same breath, and agreed to leave in pursuance of the same after three months. It is argued that having thus conceded to the termination notice, the plaintiff cannot resile therefrom and file a suit or obtain an injunction in connection therewith.
7. It is further pointed out that no specific date of the purported oral agreement has been pleaded in the plaint.
8. Learned senior counsel further relies on an offer letter dated November 4, 2005, contemporaneous with the alleged oral agreement, which contains the specific terms of the contract between the hospital and the plaintiff. It is, thus, submitted that in view of the contract between the parties having been reduced to writing at the same period, the story of an oral agreement, that too without any particulars thereof, is not credible.

9. Learned senior counsel appearing for the defendant no. 1/appellant next argues that the suit itself is not maintainable under Clauses (c) and (d) of Section 14, read with Section 41(e), of the Specific Relief Act, 1963, as amended (hereinafter referred to as “the 1963 Act”). As the contract, even as pleaded, is determinable by its very nature and the same is dependent on the personal skills of the plaintiff, no suit is maintainable for specific performance of the same. It is also submitted that the suit is hit by Section 14(b) of the 1963 Act, as its performance involves the performance of a continuous duty which the Court cannot supervise.
10. Learned senior counsel cites Percept *D’Mark (India) (P) Ltd. v. Zaheer Khan and Another*, reported at (2006) 4 SCC 227, where it was observed by the Hon’ble Supreme Court that no suit lies for specific performance of contracts for personal services.
11. Learned senior counsel also relies on a co-ordinate Bench judgment of this Court in *Purna Chandra Das v. Warren Industrial Ltd. and Another*, reported at 1991 SCC OnLine Cal 183, where it was held that where there is a contractual relationship, there must be some special public law element before the Court for granting relief otherwise than by way of damages. In the field of contract of service, it was held, there is very little scope of judicial review, unless it could be shown that in the matter of such contract, there are some public law doctrines applicable to public servants, either on the basis that they held a public office or that there was some statutory provision regulating dismissal.

- 12.** In reply, learned senior counsel for the plaintiff/respondent no. 1 contends that the plaintiff is a neurosurgeon of renown and is well-respected in his field. Several patients of the defendant/proforma respondent no. 2-Hospital are utterly dependent on the plaintiff for continuance of their proper care and treatment. Thus, if the plaintiff is unceremoniously prevented from continuing with his services with the Hospital, such patients shall suffer irreparably. Furthermore, it is contended that the plaintiff/respondent no. 1 would also require some time to join a new hospital or any other institute. It is submitted that irrespective of the oral contract, a notice of mere three months, as given to the plaintiff, is utterly insufficient in the above context. For termination of such contractual services, it is argued that a notice for a reasonable period is required, which is absent in the present case. Learned senior counsel contends that the oral agreement pleaded in Paragraph Nos. 5 to 9 of the plaint clearly indicates that the termination, if any, of such contract is subject to mutual consent, which is absent in the present case.
- 13.** Learned senior counsel relies on an unreported co-ordinate Bench judgment of this Court in *Akshay Vinimay LLP v. Neeraj Bajoria and others* [FMA No.250 of 2026] for the proposition that the scope of interference in an appeal against an *ex parte* ad interim injunction is extremely limited. As per the said report, the legislative scheme of Order XXXIX of the Code of Civil Procedure covers all shades of grievance. In case it is contended by the defendant that the *ex parte* order was obtained by misleading the Court, by suppression of material facts or otherwise or by making false statements, such conduct is to be brought to the notice of the same Court under

Order XXXIX Rule 4 of the Code for the order obtained on the basis of such *mala fide* act to be varied, modified or reversed on such ground alone.

14. Hence, new documents cannot be looked into by this Court within the limited scope of the present appeal and the question of suppression also cannot be adjudicated for the first time before this Court.
15. Learned senior counsel appearing for the plaintiff/respondent no. 1 further argues that the Court has ample power under Section 14A of the 1963 Act to engage an expert to verify the authenticity of the documents relied on by the defendants in the suit. Since the very authenticity of the purported agreement dated April 2, 2025, relied on by the defendants, and the plaintiff's signature thereon, are assailed in the suit, it is a subject-matter of trial on evidence by appointment of experts to ascertain the veracity of such allegations. At the *ex parte* ad interim stage, the court is merely to proceed on the basis of the averments made in the plaint and the injunction application, on the strength of which a strong *prima facie* case has been made out in the instant case.
16. Accordingly, it is submitted that the appeal may be dismissed.
17. Upon hearing learned counsel and going through the materials on record, the court comes to the following conclusions:
18. Insofar as the scope of an appeal against an *ex parte* ad interim injunction order is concerned, the same is extremely limited, confined to the materials and pleadings which were before the Trial Court on the date of passing of the impugned order. There are three modes of challenge to such an order – an appeal, a vacating application under Order XXXIX Rule 4 of the Code and

contesting the injunction application itself by filing a written objection thereto. Order XXXIX Rule 4 clearly encompasses a challenge on the ground that material facts were suppressed or that the order was obtained by misleading the Court. New documents, if produced by the defendants, can only be looked into upon those being brought on record before the Trial Court subsequently. At the *ex parte* ad interim stage, the court is only to look into the pleadings in the plaint and the injunction application and the documents filed in connection therewith or relied on therein. An appeal would be illusory to the extent that new facts are sought to be brought on record, since those were not before the Trial Court, and the Appellate Court is only to ascertain whether the learned Trial Judge was justified in passing the impugned order on the basis of the pleadings and materials before the said Court. Hence, this Court, within the limited scope of the present appeal, cannot look into the new documents, in the form of written agreements, sought to be relied on by the defendant no. 1/appellant. Thus, we proceed on the materials and pleadings which were before the Trial Court at the time of passing of the impugned order.

- 19.** The first striking feature of the matter is that even in the plaint and the injunction application, the specific date when the alleged oral agreement was entered into is not disclosed. It has merely been stated that the same was entered into in the month of November, 2005, without disclosing the attending circumstances or in whose presence such agreement was entered. Hence, even on the plaint pleadings, it would be difficult for the Court to accept the existence of such oral agreement.

20. The next feature of the case is that a contract of the nature pleaded by the plaintiff/respondent no. 1 is determinable by its very nature, thus coming within the ambit of Section 14(d) of the 1963 Act, which provides that such contracts are not specifically enforceable. Consequentially, under Section 41(e) of the said Act, a contract which is not specifically enforceable does not call for an injunction being passed in support of the same. As per the plaintiff's averments, the oral agreement comprises of a contract whereby the plaintiff/respondent no. 1 was to offer his professional services to the proforma respondent no. 2-hospital, which is more transient in nature than a regular employment contract. It is nobody's case that the plaintiff has been an employee of the defendants at any point of time. The law does not contemplate, even in respect of employment agreements, that such contracts can be in perpetuity. The employer has discretion as to whom to employ, which is only subject to the principles of natural justice and the governing law and rules, if any, insofar as termination of employment is concerned. A contract contemplating rendering of professional services by a doctor to a hospital is of a more limited nature, the perpetuation of which for an indefinite period is not envisaged in law. The plaintiff/respondent no. 1 is admittedly an independent professional who has been rendering services for the proforma respondent no. 2-Hospital, and is not an integral part of the hospital administration or its employees. It is, thus, for the defendants to decide as to whom to continue with on their panel of doctors/neurosurgeons.

- 21.** Moreover, the nature of the service contemplated under the alleged oral agreement is such that it is entirely dependent on the personal skills and qualifications of the plaintiff and the preferences of services to be offered by the defendants to their customers/patients. Hence, such a contract cannot be specifically performed insofar as its material terms are concerned. Accordingly, the bar under Section 14(c) of the 1963 Act also operates in the present context.
- 22.** The plaintiff claims an injunction on the terminus of continuance of his services to the patients, which patients are not his own but of the defendant/proforma respondent no. 2-hospital. It is not possible for the Court to continually supervise whether such services are permitted to be offered, hence bringing the alleged oral agreement within the purview of Section 14(b) of the 1963 Act as well.
- 23.** Thus, the relief sought in the suit is *ex facie* barred by Section 41(e), read with Clauses (b), (c) and (d) of Section 14, of the 1963 Act.
- 24.** The plaintiff has advanced an alternative argument of insufficient notice, which is beyond the plaint case. Even otherwise, the same is *ex facie* not acceptable. A prior notice of three months to a doctor, admittedly of repute, to terminate his contract, necessitating him to shift his services to a different hospital, and for his patients in the hospital to be entrusted to a different doctor or doctors practising in the same field, is *prima facie* sufficient. A hospital has its own records of the ailments, history and conditions and other medical details of the patient, on the basis of which a doctor on its panel or rolls treats the patients. There is no conceivable

reason as to why such duty cannot be entrusted to a different doctor over the long period of three months. There is no inter-personal privity of contract between the concerned doctor and the hospital's patients and it is only the hospital which is duty-bound to render proper services to the patient, at its own risk. In the present case, it is not the patients concerned but the doctor himself who has filed the suit. Thus, the plaintiff cannot be permitted to espouse the cause of his patients, even if any.

- 25.** Insofar as sufficiency of the notice period is concerned, no parameter has been disclosed by the plaintiff to hold that the period of three months is palpably insufficient or unreasonable.
- 26.** The plaintiff/respondent insinuates that a three months' period is insufficient for him to find an alternative hospital to render the services. A doctor attached to a hospital for twenty plus years, being a surgeon of repute, cannot plead that it would be difficult for him to join a new hospital over a period of three months.
- 27.** Another vital aspect of the matter comes to light in the e-mail sent by the plaintiff to the defendants in the month of May, 2026, which was a part of the annexures to the temporary injunction application filed in the Trial Court. From the same, we find that the plaintiff requested the defendants to "stick to the spirit of the letter of pre-closure of contract and please ensure that..." he is allowed to take care of his patients for the next three months, beseeching the defendants not to do anything which will "harm patient care". Receipt of the pre-closure of contract on May 20, 2026 is also

acknowledged and attached to the said e-mail by the plaintiff/respondent no. 1.

28. Thus, by his very conduct, the plaintiff/respondent no. 1 acceded to the termination letter and sought a further period of three months, in consonance with the period stipulated in the pre-closure/termination communication, conceding in principle to the fact that the contract was terminable in nature. Having so conceded, the plaintiff cannot take a diametrically opposite stand now by assailing the said notice, by dint of his own contract. Also, the plaintiff himself sought three months' extension and cannot now argue that the said period was inadequate.
29. In an injunction matter, the Civil Court also acts as a court of equity and has to ascertain whether the plaintiff has come with clean hands. From the perspective of equity as well, in view of the conduct of the plaintiff himself in seeking three months' time to continue his services in the hospital, in terms of the impugned termination letter, he ought not to be permitted to argue that the said period is insufficient and/or to challenge such termination.
30. In the light of the above findings, we do not find any *prima facie* case having been made out by the plaintiff/respondent no.1 for grant of injunction.
31. It has also been submitted during arguments that the plaintiff/respondent no. 1 has, in the meantime, joined a different hospital. Thus, no urgency is disclosed, which is a *sine qua non* for grant of *ex parte* injunction prior to giving notice to the defendants. Also, we find utter absence of irreparable injury on the part of the plaintiff if the injunction is refused. Moreover, the balance of convenience and inconvenience lies in favour of refusal of

injunction, since the defendants would be in a fix, not being able to engage a new neurosurgeon in place of the plaintiff during subsistence of the injunction order, despite having terminated the previous contract with the plaintiff/respondent no. 1, which will disrupt the patient care services rendered by the defendants and cause unwarranted and irreparable injury to the hapless patients.

- 32.** As discussed earlier, a contract of service is determinable by its very nature and cannot be perpetuated by injunction, which would tantamount to re-writing the contract itself. In the present case, the plaintiff's standing is on a much weaker footing, since the oral contract pleaded is not a contract of regular service or employment but a temporary agreement contemplating professional services to be rendered by the plaintiff to the patients of the concerned hospital, which, by its very nature, is determinable at the behest of the defendants.
- 33.** The plaintiff has pleaded that the purported oral contract included a clause whereby there could not be any termination without mutual consent, in support of which precious nothing has been disclosed, either by way of pleadings as to the attending circumstances and/or any contemporaneous document. Rather, such a clause is incompatible with a contract for rendering professional medical services to a hospital.
- 34.** However, although the Hon'ble Supreme Court, in *Percept D'Mark (India) (P) Ltd.(supra)*¹, reiterated that contracts for personal services cannot be specifically performed, the same was rendered in the context of the

¹ ***Percept D'Mark (India) (P) Ltd. v. Zaheer Khan and Another, reported at (2006) 4 SCC 227***

unamended Section 14(1) of the Specific Relief Act, 1963, which has since been amended with effect from October 1, 2018. Even in the previous unamended section, though, there was no specific bar in respect of “contract of personal services”. Rather, the bar as to specific performance of contracts which are by their very nature determinable was there, which has been retained in the amended provision. A contract for personal services, broadly, comes within the paradigm of such bar. In that sense, the ratio laid down in *Percept D’Mark (India) (P) Ltd. (supra)*² still holds good, since the contract pleaded by the plaintiff in the instant case also comes within the purview of such bar.

35. A co-ordinate Bench of this court, in *Purna Chandra Das (supra)*³, had reiterated the well-settled proposition of law that in a matter of contract of service, unless there is a public law element involved, the courts generally do not interfere. There is no reason as to why the said principle cannot be applied in the present context.
36. In continuance of our earlier findings as to the scope of the present appeal against an *ex parte* ad interim injunction order, this court would be failing in its duty if the conflict of law prevailing on that aspect is not recorded.
37. Initially, in *Muktakesi Dawn and others v. Haripada Mazumdar and another*, reported at AIR 1988 Cal 25, and in *Jitesh Pandey v. Urmilata Sinha*, reported at 1999 SCC OnLine Cal 460, a Division Bench and a learned Single Judge of this court, respectively, had recognised the settled legal position

² *Percept D’Mark (India) (P) Ltd. v. Zaheer Khan and Another*, reported at (2006) 4 SCC 227

³ *Purna Chandra Das v. Warren Industrial Ltd. and Another*, reported at 1991 SCC OnLine Cal 183

that at the *ex parte* ad interim stage, in the absence of any traversal, the pleadings in the injunction application have to be taken as true in manner and in form and the court, in an appeal, cannot travel beyond the scope of the jurisdiction of the Trial Court while granting such injunction.

- 38.** In *Bengal Club Ltd. v. Susanta Kumar Chowdhary*, reported at AIR 2003 Cal 96, the said proposition was differed with by another co-ordinate Bench (Division Bench) of this court, without referring the same to a Larger Bench, as is the established principle of the law of precedents.
- 39.** Taking into consideration all the above judgments, in *Akshay Vinimay LLP (supra)*⁴, this court has respectfully disagreed with the view taken in *Bengal Club Ltd. (supra)*⁵, expressing unanimity with the earlier view laid down by a Bench of coordinate strength in *Muktakesi Dawn (supra)*⁶. Although a reference has been made to a Larger Bench on the said issue in *Akshay Vinimay LLP (supra)*⁴, which reference is still pending, we do not find any reason to differ from the view taken therein and in *Muktakesi Dawn (supra)*⁶. as well as *Jitesh Pandey (supra)*⁷. Thus, the appellant's prayer to be permitted to bringing in new documents cannot be acceded to.
- 40.** However, in view of the findings arrived at by this court on the other issues above, we find that the learned Trial Judge erred in law and in fact in granting *ex parte* ad interim injunction in a suit which is *ex facie* not maintainable, without adverting to such aspect of the matter at all. It is trite

⁴ *Akshay Vinimay LLP v. Neeraj Bajoria and others [FMA No.250 of 2026]*

⁵ *Bengal Club Ltd. v. Susanta Kumar Chowdhary, reported at AIR 2003 Cal 96*

⁶ *Muktakesi Dawn and others v. Haripada Mazumdar and another, reported in AIR 1988 Cal 25*

⁷ *Jitesh Pandey v. Urmilata Sinha, reported at 1999 SCC OnLine Cal 460,*

law that the maintainability of the suit in which the injunction order is sought is an essential component of the *prima facie* case to be made out for the grant of such injunction.

- 41.** The impugned order fails to pass muster on such count.
- 42.** Accordingly, the impugned order cannot be sustained and the present appeal succeeds.
- 43.** Hence, FMAT No. 345 of 2026 is allowed on contest, thereby setting aside the impugned order, bearing Order no. 2 dated August 18, 2026 passed by the learned Civil Judge (Senior Division) Fifth Court at Alipore, District – South 24 Parganas in Title Suit No. 1226 of 2026.
- 44.** CAN 1 of 2026 is consequentially disposed of.
- 45.** There will be no order as to costs.
- 46.** We make it clear that the above findings are tentative in nature and the learned Trial Judge shall not be unduly influenced by the said findings or by the outcome of the present appeal and will be at liberty to decide the temporary injunction application and the suit on their own merits in accordance with law.
- 47.** The defendants in the suit shall file their written objection(s) at the earliest, positively within October 15, 2026, in the Trial Court. It is expected that learned Trial Judge shall, thereafter, dispose of the injunction application itself as expeditiously as the business of the said court permits, preferably within one month after the reopening of the Trial Court subsequent to the upcoming Annual Vacation of the said court.

- 48.** Urgent photostat certified copies of this judgment, if applied for, be supplied to the parties upon compliance of all formalities.

(Sabyasachi Bhattacharyya, J.)

I agree.

(Sandip Kumar De, J.)