

**IN THE HIGH COURT AT CALCUTTA
CIVIL REVISIONAL JURISDICTION
APPELLATE SIDE**

**Before:
The Hon'ble Justice Hiranmay Bhattacharyya**

**C.O. 1258 of 2025
With
CAN 1 of 2026
Surajit Lahiri
Vs.
The President, Governing Body,
JIS College of Engineering & Ors.**

For the Petitioner : Mr. Surajit Lahiri (in person)

For the Opposite Parties : Mr. Sanjoy Baid
Mr. Arijit Sarkar
.... advocates

Reserved on : 27.08.2026

Judgment on : 15.10.2026

Hiranmay Bhattacharyya, J.:-

1. This application under Article 227 of the Constitution of India is at the instance of the plaintiff and is directed against an order being no. 50 dated 27.02.2025 passed by the learned Civil Judge, Senior Division, 3rd Court at Barasat, District 24 Parganas (N) in Title Suit no. 1007 of 2017.
2. By the order impugned, an application under Section 151 of the Code of Civil Procedure stood rejected.
3. Petitioner filed a suit for declaration that the suspension order issued on 26.09.2016 and the order of dismissal dated 11.03.2017 is unlawful,

inoperative and not binding upon the petitioner and for a decree of mandatory injunction. In connection with the said suit, petitioner filed an application under Order 39 Rule 1 and 2 of the Code of Civil Procedure inter alia praying for an order of temporary injunction restraining the defendants/opposite parties from withholding and discontinuing payment of subsistence allowance to the petitioner with effect from the date of suspension till the disposal of the suit.

4. The opposite parties contested the application for temporary injunction by filing a written objection.
5. The learned Trial Judge by an order dated 30.11.2022 dismissed the application for temporary injunction.
6. Thereafter, the petitioner filed an application under Section 151 of the Code of Civil Procedure praying for certain interim orders. Such application stood rejected by the impugned order.
7. In course of hearing of this application under Article 227 of the Constitution of India an issue as to the entertainability of this application cropped up for which this Court invited the respective parties to address on the issue of maintainability /entertainability of this application under Article 227 of the Constitution of India.
8. Petitioner appearing in person submitted that the earlier application was filed by the petitioner under Order 39 Rule 1 and 2 of the Code of Civil Procedure and the present application has been filed under Section 151 of the Code of Civil Procedure. He contended that no appeal lies under Order 43 Rule 1 of the Code of Civil Procedure against an order passed under Section 151 of the Code of Civil Procedure. He, therefore, contended that since there is no statutory appellate remedy available against the order impugned, this application under Article 227 of the Constitution of India is maintainable. In support of his contention that an application under Article 227 of the Constitution of India is maintainable, petitioner placed reliance upon the decisions of the Hon'ble Supreme Court in **Radhey Shyam and**

anr. vs. Chhabi Nath and another reported at **(2015) 5 SCC 423** and **State of Uttar Pradesh and ors. vs. Roshan Singh** reported at **(2008) 2 SCC 488**. He further submitted that the Hon'ble Division Bench in **Sukhendu Maity vs. Abhinaba Prakashan & Ors** reported at **(2005) 3 CHN 1** held that an appeal lies against an order passed under Section 151 of the Code of Civil Procedure but the effect of such decision impliedly stood diluted by the aforesaid decisions of the Hon'ble Supreme Court. He also submitted that the decision in the case of **Sukhendu Maity** (supra) is distinguishable on factual matrix. He also placed reliance upon the decisions in the case of **Veerabhadrapa vs. Mayappa** reported at **ILR (1993) Kar** and an order dated 24.02.2026 passed by the Hon'ble High Court of judicature for Rajasthan at Jodhpur in **S.B. Civil Petition no. 4181 of 2026** in the case of **Ramkumar S/o Jagmaal vs. State of Rajasthan & Ors.** in support of his contention that the instant application is maintainable.

9. The learned advocate appearing for the opposite party submitted that the reliefs claimed in the application under Section 151 of the Code of Civil Procedure squarely falls within the scope of Order 39 Rule 1 and 2 of the Code of Civil Procedure. He contended that if a litigant instead of correctly describing an application as one under Order 39 Rule 1 and 2 of the Code of Civil Procedure captions the same as one under Section 151 of the Code of Civil Procedure, any order passed on such application is an appealable one. In support of such contention he placed reliance upon a decision of the co-ordinate bench in **Ravi Maharia vs. Reliance Petroleum** reported at **(2000) 1 CHN 439**.
10. Heard the petitioner appearing in person and the learned advocates for the opposite parties on the maintainability/entertainability of this application under Article 227 of the Constitution of India and perused the materials placed.
11. This Court is quite conscious of the position of law that there may be cases where the temporary injunctions sought for is of such a nature that the

same may not come within the scope and purview of Order 39 Rule 1 and 2 of the Code of Civil Procedure. In such a case a litigant can approach the Court invoking the provisions of Section 151 of the Code of Civil Procedure for grant of relief and the Court can in such cases for the ends of justice grant relief to a litigant by invoking inherent power. In such a case if an injunction is granted or refused an aggrieved party cannot avail of the right of appeal under Order 43 Rule 1(r) of the Code of Civil Procedure. However, if the temporary injunction is sought for under Order 39 Rule 1 and 2 of the Code of Civil Procedure, an order allowing or rejecting such an application is an appealable order under the provisions of Order 43 Rule 1(r) of the Code of Civil Procedure.

12. The question that now arises for consideration is whether a litigant can be allowed to bypass the provisions of the Code of Civil Procedure by wrongly describing an application as one under Section 151 of the Code of Civil Procedure though it really comes within the purview of Order 39 Rule 1 and 2 of the Code of Civil Procedure thereby depriving the right of appeal of a litigant.
13. The co-ordinate bench in **Ravi Maharia** (supra) held that if a litigant instead of correctly describing an application as one under Order 39 Rule 1 and 2 of the Code of Civil Procedure, captions the same as one under Section 151 of the Code of Civil Procedure, any order passed on such application on merit will be appealable simply because either the parties wrongly decided to make it under 151 or the Court passed such order without clarifying the position. The co-ordinate bench held that the litigant cannot be allowed to bypass the provisions of the Code of Civil Procedure by wrongly describing an application as one under Section 151 of the Code of Civil Procedure if it really comes within the purview of Order 39 Rule 1 and 2 resulting in deprivation of the right of appeal of a litigant.
14. The Hon'ble Division Bench in **Sukhendu Maity** (supra) held that if the prayers made in an application under Section 151 of the Code of Civil Procedure clearly comes within the purview of Order 39 Rule 1 and 2 of the

Code of Civil Procedure an appeal is maintainable against an order passed on such an application as it comes within the scope of Order 43 Rule 1(r) of the Code of Civil Procedure. The Hon'ble Division Bench reiterated the settled position of law that in deciding the question whether a particular order is appealable or not, the Court should not be guided by the wrong quotation of the provisions of a statute by the Court in the order impugned or by such wrong description given by parties of an application upon which the order was passed, but the appellate Court should find out the exact provision of the statute which authorizes the Court to pass such order.

15. From the aforesaid discussion it follows that the Court has to test whether the impugned order falls within the purview of Order 39 Rule 1 and 2 of the Code of Civil Procedure although wrongly described as one under Section 151 of the Code of Civil Procedure. If the impugned order comes within the purview of Order 39 Rule 1 and 2 of the Code of Civil Procedure though the application was wrongly captioned as one under Section 151 of the Code of Civil Procedure, an appeal under Order 43 Rule 1(r) of the Code of Civil Procedure would be maintainable.
16. It is now well settled that if a statutory appellate remedy under the Code of Civil Procedure is available to an aggrieved party, the High Court may refuse to entertain an application under Article 227 of the Constitution of India challenging an order against which an appeal lies under the Code of Civil Procedure.
17. In the case on hand, the earlier application under Order 39 Rule 1 and 2 was dismissed by an order dated 03.11.2022. In the said application under Order 39 Rule 1 and 2 the petitioner prayed for an order of temporary injunction restraining the defendants from withholding and discontinuing the payment of subsistence allowances to the petitioner with effect from the date of suspension i.e., on 26.09.2016 till the disposal of the suit.
18. In the present application under Section 151 of the Code of the Civil Procedure the petitioner sought for a direction upon the employer/opposite

party to release and to continue the monthly subsistence allowances of the plaintiff with effect from 11.03.2017 till the final hearing of the suit.

19. Though the relief in the application under Section 151 of the Code of Civil Procedure has been couched in a different way but the effect of such relief claimed is an order of injunction restraining the defendants from withholding and discontinuing the payment of subsistence allowance till the disposal of the suit.
20. In order to consider the scope of an application, such application should be read as a whole and mere caption or heading of the application does not decide the nature of such application.
21. Upon a reading of the application and the reliefs claimed therein, this Court is of the considered view that the reliefs claimed in the present application captioned as one under Section 151 of the Code of Civil Procedure squarely falls within the purview of Order 39 Rule 1 and 2 of the Code of Civil Procedure. This view is further supported by the relief claimed in the application under Section 151 of the Code of Civil Procedure in an alternative form wherein the petitioners sought for liberty to file an application under Order 39 Rule 1 and 2 read with Section 151 due to change of circumstances.
22. Thus, the petitioner was also well aware that the reliefs claimed in the application styled as one under Section 151 falls squarely within the purview of Order 39 Rule 1 and 2 of the Code of Civil Procedure.
23. In the light of the aforesaid discussion this Court holds that the application captioned as one under Section 151 of the Code of Civil Procedure squarely falls within the purview of Order 39 Rule 1 and 2 of the Code of Civil Procedure and the impugned order rejecting such an application is an appealable order under the provisions of Order 43 Rule 1(r) of the Code of Civil Procedure.

24. The decisions in the case of **Sukhendu Maity** (supra) and **Ravi Meharia** (supra) are binding precedents and this Court is inclined to follow the ratio laid down therein.
25. This Court accordingly holds that an appeal lies against the Order dated 27.02.2025 passed by the learned Civil Judge, Senior Division, 3rd Court at Barasat, District 24 Parganas (N). Since an appellate remedy under the Code of Civil Procedure is available, this Court is not inclined to entertain this application under Article 227 of the Constitution of India.
26. An issue as to correctness of the law laid down in **Surya Dev Rai vs. Ram Chander Rai** reported at **(2003) 6 SCC 675** that an order of the civil court was amenable to writ jurisdiction under Article 226 of the Constitution of India was referred to a larger bench and the said question was answered in **Radhey Shyam** (supra). The question referred to was answered in paragraph 29.1 of the said reports by holding that judicial orders of civil courts are not amenable to writ jurisdiction under Article 226 of the Constitution of India. The said reported decision is not an authority for the proposition that a litigant can be allowed to bypass an appellate remedy under the Code of Civil Procedure by wrongly captioning an application as one under Section 151 when the substance of such application squarely falls within the purview of Order 39 Rule 1 and 2 of the Code of Civil Procedure.
27. There is no quarrel to the proposition of law laid down in **Roshan Singh** (supra) that in matters in which the Code of Civil Procedure does not deal with, the Court will exercise its inherent powers to do justice between the parties. The Hon'ble Supreme Court, however, clarified that if there are specific provisions of the Code of Civil Procedure dealing with a particular topic and they expressly or by necessary implication exhaust the scope of the powers of the Court or the jurisdiction that may be exercised in relation to a matter, the inherent powers cannot be invoked in order to cut across the powers conferred by the Code of Civil Procedure.

28. In the case on hand, the petitioner attempted to cut across the powers conferred by the Code of Civil Procedure by wrongly captioning the application as one under Section 151 of the Code of Civil Procedure when the reliefs claimed therein falls under Order 39 Rules 1 and 2 of the Code, which is impermissible. Thus, the decision in **Roshan Singh** (supra) cannot come to the aid of the petitioner but the same supports the view taken by this Court.
29. In **Veerabhadrappa** (supra), the Hon'ble Karnataka High Court after returning a finding that the order impugned cannot be said to have been passed under Order 39 Rule 1 and 2 held that the defendant could not have maintained an appeal against the said order. The said decision being distinguishable on facts cannot be applied to the case on hand.
30. In **Ramkumar** (supra), the Hon'ble Rajasthan High Court after noticing that the main application seeking temporary injunction was pending passed a direction for disposal of such application within a specified time frame. The said decision does not lay down any ratio contrary to the view taken by this Court.
31. CO no. 1258 of 2025 stands dismissed as not entertained. Pending application stands disposed of. It is, however, made clear that this Order shall not preclude the petitioner from approaching the proper forum in accordance with law for appropriate reliefs.
32. There shall be, however, no order as to costs.
33. Urgent photostat certified copies, if applied for, be supplied to the parties upon compliance of all formalities.

(HIRANMAY BHATTACHARYYA, J.)