In the High Court at Calcutta
Civil Appellate Jurisdiction
Appellate Side

The Hon'ble Mr. Justice Sabyasachi Bhattacharyya
And
The Hon'ble Mr. Justice Supratim Bhattacharya

FMAT No. 460 of 2025
IA No: CAN 1 of 2025

Parraj Automobiles Private Limited
– Versus –
Mr. Samiran Sinha

For the appellant	:	Mr. Avishek Guha, Ms. Sonal Agarwal, Ms. Arunika Dutta
For the respondent	:	Mr. Rabindranath Mahato, Mr. Aritra Shankar Ray
Heard and reserved on	:	03.02.2026
Judgment on	:	10.02.2026

Sabyasachi Bhattacharyya, J.:-

1. The present appeal has been preferred against an order of refusal of *ad interim* injunction.

2. The plaintiff/appellant has filed the suit, from which the instant appeal arises, for the following reliefs:

(a) Leave may be granted under Order II Rule 2 of the Code of Civil Procedure, 1908;

(b) A decree of specific performance may be passed in respect of the terms, covenants and conditions of the letter of appointment dated 1st

March, 2023 including but not limiting to Clauses 11, 12 and 15.3 thereof as well as the employee non-disclosure undertaking dated 1st March, 2023 and direct the Defendant to specifically perform its contractual obligation thereunder;

(c) A decree may be passed for a sum of Rs. 3,00,000/- which may be paid by the Defendant to the Plaintiff as liquidated damages in terms of Clause 15.3 of the letter of appointment for the period served, the mandatory one month notice period together with interest thereon on such rate as this Learned Court may deem fit and proper;

(d) A decree of permanent injunction may be passed restraining the Defendant directly or indirectly engaging or assigning himself in any capacity whatsoever with any business or concerned that is engaged in manufacturing, marketing, providing services identical to or similar to those of the Plaintiff company for a period of two years from the date of cessation of his employment with the Plaintiff;

(e) Pass a decree of permanent injunction restraining the Defendant from soliciting, inducing, influencing or attempting to procure the resignation of transfer of any employ7ee, agent or consultant of the Plaintiff company whether directly or indirectly in violation of the contractual obligation undertaken by him;

(f) A decree of permanent injunction may be passed restraining the Defendant from disclosing, publishing or otherwise using directly or indirectly any confidential propriety or business information, data or trade secret belonging to the Plaintiff company including Customer List, pricing data, financial records, operational procedure and marketing strategy;

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(g) A decree of mandatory injunction may be passed mandating the Defendant to immediately resign from the services which the Defendant is presently engaged in, inasmuch as the Defendant is presently in service in a firm which carries on the same business as that of the Plaintiff and as such, is a direct competitor of the Plaintiff herein;

(h) Attachment before judgment;

(i) Injunction;

(j) Receiver;

(k) Commissioner;

(l) Costs;

(m) *Such further and/or other reliefs;*

3. In connection with the said suit, an application for temporary and *ad interim* injunction has been filed by the plaintiff, which contains the following prayers:

a) An order of temporary injunction may be passed, restraining the Defendant from continuing employment with or rendering services to any company or concern engages in competing business with the Plaintiff company for a period of two years from the date of cessation of the employment, and from soliciting or inducing any employee of the Plaintiff to leave its service.

b) An order of injunction may be passed, restraining the Defendant from using or disclosing any confidential information or trade secrets belonging to the Plaintiff in any manner whatsoever.

c) Ad interim orders in terms of the above prayers

d) Costs incidental to this application may be directed to be paid by the defendant to the plaintiff herein;

e) Such further and/or other orders may be passed as this Learned Court may deem fit and proper;

4. Learned counsel for the plaintiff/appellant argues that the learned Trial Judge, despite arriving at the finding that the plaintiff has established a *prima facie* case, refused to grant *ad interim* injunction at the *ex parte* stage on the ground that damages will provide adequate relief and that the injury suffered is not irreparable. It is contended that there are two components of the reliefs claimed in the suit – one pertaining to specific performance of the employment agreement and injunction, and the other to compensation by way of damages.

5. In the appointment letter issued to the defendant/respondent, who is an employee of the appellant-Company, there are several clauses covering different facets. Clause 10 and its sub-clauses are designed to protect the confidentiality of the secrets and specialised data and information of the Company, Clause 11 pertains to the non-competition, and Clause 12 speaks about non-solicitation.

6. It is alleged that the respondent, after having purportedly resigned from the Company by an e-mail dated October 8, 2025, with effect from the previous day, that is, October 7, 2025, left the appellant-Company and joined a rival company running the same business as the appellant next door, thus violating all the abovementioned Clauses. It is argued that in respect of the violation of the non-competitive, non-solicitation and confidentiality clauses, unless

injunction is granted immediately, the trade secrets and sensitive data/information of the Company would constantly run the imminent risk of being divulged, causing loses which are incalculable. Thus, there is immediate urgency, requiring injunction, in respect of violation of the said clauses.

7. Clause 15.3 of the employment contract, on the other hand, mandates any employee of the Company, who has been confirmed in service, to give one month's prior notice before resigning, the penalty for violating which is liquidated damages of Rs.3,00,000/- as per the said clause. The money claim, resulting in damages, is restricted to the said clause, insofar as the frame of the suit is concerned.

8. Thus, it is argued that the learned Trial Judge failed to distinguish between the two components and, in spite of observing that a *prima facie* case has been made out, refused to grant the entire injunction sought by the plaintiff/appellant on the blanket finding that damages would provide adequate alternative remedy.

9. Learned counsel for the appellant next argues that the defence of the defendant/respondent on Section 27 of the Contract Act is misconceived, since the bar under the said provision has been diluted by recent judgments of this Court and the Hon'ble Supreme Court. Moreover, the non-competitive clause and the non-solicitation clause in the employment agreement are inter-linked with the confidentiality clause, since the worth of the respondent as

an employee to the competing business next door, where the respondent has joined, directly gives rise to an apprehension that the trade secrets, confidential information and internal data of the appellant-Company would be compromised. As such, the non-competitive and non-solicitation clauses cannot be divorced from the confidentiality clause, which the plaintiff/appellant is otherwise entitled to enforce in any event, without being fettered by Section 27.

10. Learned counsel submits that in terms of Section 42 of the Specific Relief Act, 1963 (hereinafter referred to as "the 1963 Act"), even negative covenants of an agreement can be enforced.

11. Learned counsel for the appellant next submits that the service of the respondent, which was initially as a probationer, was subsequently confirmed by a letter dated March 1, 2024. Hence, it is argued that the rigour of Clause 15.3 is squarely applicable.

12. Learned counsel submits that by virtue of continuing as an employee of the appellant-Company, drawing salary regularly even after March 1, 2024, and by giving a resignation letter, the respondent admitted the continuance of his service with the appellant.

13. Learned counsel cites *Haji Mohammed Ishaq Wd. S. K. Mohammed and Others v. Mohamad Iqbal and Mohamed Ali and Co.*, reported at *(1978) 2 SCC 493* and *Paramjeet Singh & another v. The State of M.P. & others*, reported at *2016 SCC OnLine MP 870*, to argue that the

Hon'ble Supreme Court and a Division Bench of the Madhya Pradesh High Court, respectively, categorically endorsed the principle of implied contract by conduct. Thus, learned counsel submits that the respondent, by his conduct, admitted to the continuation of his contract of employment with the appellant-Company at least till tendering the purported resignation letter.

14. Learned counsel next cites a co-ordinate Bench judgment of this Court in *Dr. Sudipta Banerjee v. L.S. Davar & Company and Others*, reported at *2022 SCC OnLine Cal 4479*, and *Vijaya Bank and Another v. Prashant B Narnaware*, reported at *2025 SCC OnLine SC 1107*, in support of his contention that the bar in Section 27 of the Contract Act has since been diluted, taking into account the exigencies of modern commercial enterprises.

15. Learned counsel appearing for the appellant next contends that even if the respondent were to be construed to be still a probationer, since the premature termination by the respondent of his service is invalid in terms of Clause 15 of the employment agreement, which contemplates prior written notice of 30 days, the respondent should be deemed to continue in service with the appellant. Hence, the proposition laid down in the judgments cited by the respondent, to the effect that the bar under Section 27 of the Contract Act applies to absolute as well as partial restrictions, is not attracted at all, since such restriction should be deemed in the context of

continuing service of the respondent and not post-employment restriction.

16. Learned counsel for the appellant relies on a letter dated October 28, 2025, written by one Mandira Mahapatra, allegedly an executive (HR) of the appellant-Company, to the appellant-Company indicating that the respondent was trying to poach her on behalf of a rival company. Moreover, an e-mail of one Sandip Manna, another employee of the appellant, written to the said Mandira Mahapatra on December 14, 2025 also indicated that the said Sandip Manna sought to leave the Company. It is alleged that the said exodus from the appellant-Company came on the wake of the appellant's purported resignation and was at the behest of the respondent, which is squarely violative of the non-solicitation clause in the employment agreement of the respondent.

17. Learned counsel appearing for the respondent, in reply, argues that Section 27 of the Contract Act is an absolute bar to any restriction on the exercise of a lawful profession, trade or business of an employee, particularly after the termination of the employment agreement containing such restrictive covenant. Learned counsel places reliance on *Superintendence Company of India (P) Ltd. v. Sh. Krishan Murgai*, reported at *(1981) 2 SCC 246*, where the Hon'ble Supreme Court categorically observed that the words "restrained from exercising a lawful profession, trade or business" in Section 27 do not mean an absolute restriction, and are intended to apply to a

partial restriction, a restriction limited to some particular place, etc.; otherwise, the first exception would have been unnecessary.

18. Learned counsel appearing for the respondent next contends that whereas the communication dated March 1, 2024 made by the appellant to the respondent, granting extension of the probation period, is annexed to the affidavit-in-opposition, which is the same date on which the alleged confirmation letter was given to the respondent, the said extension letter was not disputed by learned counsel for the appellant. Thus, it is evident that the appellant's probation period was itself extended on March 1, 2024 till February 28, 2025. In the absence of proof of any further extension, the probation period of the respondent came to an end on February 28, 2025. It is argued that the alleged confirmation letter, being contrary to the extension letter, which is an admitted document, ought to be disbelieved since the appellant could not have simultaneously extended the probation period of the respondent and also confirmed the respondent's service as a permanent employee.

19. It is further pointed out that while the extension letter as well as the original appointment letter of the respondent were counter-signed by both parties, conspicuously, the purported confirmation letter did not carry the signature of the respondent. Thus, the said document is obviously a manufactured one.

20. Moreover, in the pre-suit communication made by the appellant to the respondent on October 17, 2025, there was no whisper of the alleged confirmation dated March 1, 2024. Rather, it was contended in the said Advocate's letter of the appellant that the letter of appointment had been renewed and extended on two occasions on a yearly basis, that is, on March 1, 2024 and March 1, 2025, thereby belying the story of confirmation, which is sought to be made out for the first time before the court.

21. It is further submitted by the respondent that the concept of implied confirmation cannot be invoked, in view of Clause 3 of the respondent's appointment letter expressly clarifying that there would be no automatic confirmation of the service, even after the expiry of the probation period, unless the management confirms the service in writing. Hence, as on the date of issuance of the resignation letter, that is on October 8, 2025, the respondent was not in service at all. In reply to the pre-suit letter of the appellant, the respondent had pointed out that he was compelled to stay on in the company by coercion, without there being any legitimate extension of his service. Hence, the provisions of Section 27 of the Contract Act clearly apply, as the respondent was not in service on the date of tendering resignation.

22. Furthermore, there was also no liability on the part of the respondent to give a prior notice of one month in terms of Clause 15.3 of the appointment letter before quitting the appellant's

employment, since the respondent was never confirmed in service at the relevant juncture whereas the said clause is applicable only to confirmed employees.

23. Learned counsel for the respondent next argues that Mandira Mahapatra, who allegedly wrote the letter to the appellant indicating that she was being lured out of the appellant-Company for a rival company, does not feature in the employees' list of the appellant-Company as annexed to the affidavit-in-reply of the appellant-Company. Hence, the entire story of violation of the non-solicitation clause by the respondent is fictitious.

24. Lastly, learned counsel for the respondent argues that the restriction clause preventing the respondent from joining any competitive business is violative of Section 27 of the Contract Act and would deprive the respondent of his livelihood, since a person with a marketing experience would obviously join a service, upon leaving the appellant-Company, in a different company of the same nature. The experience of the respondent being in the field of marketing, the restrictive clause would prevent the respondent from having any job at all, as his further employment would only be in the same sphere of commercial activity. Thus, it is argued that the learned Trial Judge was justified in refusing *ad interim* injunction.

25. Upon hearing learned counsel for both parties, this Court comes to the following conclusions:

Section 27 of the Contract Act, 1872

26. In *Sh. Krishan Murgai (supra)*[1], the Hon'ble Supreme Court clearly laid down the law to the effect that Section 27 of the Contract Act is not confined to an absolute bar to exercising a lawful profession, trade or business but also covers partial restrictions to such exercise. In such context, the language of Section 27 acquires relevance. The said Section is set out below:

> *"**27. Agreement in restraint of trade, void.**—Every agreement by which any one is restrained from exercising a lawful profession, trade or business or any kind, is to that extent void.*
>
> *Exception 1.—**Saving of agreement not to carry on business of which goodwill is sold.**—One who sells the goodwill of a business may agree with the buyer to refrain from carrying on a similar business, within specified local limits, so long as the buyer, of any person deriving title to the goodwill from him, carries on a like business therein, provided that such limits appear to the Court reasonable, regard being had to the nature of the business."*

27. The plain language of the said provision is clear, to the effect that every agreement restraining anyone from exercising a lawful profession, trade or business of any kind is void to that extent. The only exception provided in the said Section is in respect of one who sells the goodwill of a business, who may agree with the buyer to refrain from carrying on a similar business and within specified local limits so long as the buyer or any person deriving title to the goodwill from him carries on a like business therein, subject to the

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[1] ***Superintendence Company of India (P) Ltd. v. Sh. Krishan Murgai*, reported at *(1981) 2 SCC 246***

court construing such limit to be reasonable, regard being had to the nature of the business.

28. The said exception is not attracted in the present case, since it is nobody's case that the respondent used to sell the goodwill of the appellant's business. Thus, going by the principle laid down in *Sh. Krishan Murgai (supra)*[2], the restrictive covenant in Clause 11 of the appointment letter of the respondent is *prima facie* violative of Section 27 of the Contract Act, 1872.

29. The said clause imposes a non-competition covenant whereby, even after the departure of the concerned employee from the services of the appellant-Company for any reason, the said employee cannot enter into the service of a company studying, manufacturing or selling products/services that are identical or similar to those as done by the appellant-Company.

30. Thus, in the event it was to be established that the respondent had left the appellant-Company at the relevant juncture, the restrictive covenant contemplated in Clause 11 of the employment agreement would stand void.

31. The appellant seeks to rely on two judgments in the context of Section 27, none of which helps the appellant.

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[2] ***Superintendence Company of India (P) Ltd. v. Sh. Krishan Murgai*, reported at *(1981) 2 SCC 246***

32. In the co-ordinate Bench judgment of *Dr. Sudipta Banerjee (supra)*[3], the said Bench merely made a passing comment on the changing times and the necessity to impose restrictions and recognized negative covenants in service contracts, especially where it involved specialized knowledge, as it must live up to the present needs. However, the entire consideration in the said case revolved around a covenant restricting disclosure of confidential information and dissemination of trade secrets. On the final count, the co-ordinate Bench modified the *ad interim* order challenged before it by restraining the appellants therein from disclosing, divulging or sharing confidential information gathered during the course of their employment in any manner whatsoever.

33. Thus, insofar as the non-competition clause is concerned, the said judgment cannot be taken to be an authority, although it might be considered one in respect of the non-disclosure covenant. At best, the said judgment can be construed as a precedent on Clause 10 of the instant service contract, pertaining to the confidentiality clause.

34. In *Vijaya Bank (supra)*[4], the second judgment relied on by the appellant on such score, the Hon'ble Supreme was considering Section 27 of the Contract Act in the context of an early termination clause. In the case before the Supreme Court, a minimum service tenure for employees was incorporated in the service contract and

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[3] ***Dr. Sudipta Banerjee v. L.S. Davar & Company and Others*, reported at *2022 SCC OnLine Cal 4479***

[4] ***Vijaya Bank and Another v. Prashant B Narnaware*, reported at *2025 SCC OnLine SC 1107***

liquidated damages were imposed in the event of premature resignation. In such backdrop, the Hon'ble Supreme Court held that there was no violation of Section 27 of the Contract Act. However, the said judgment is also not a precedent for the proposition that a restrictive clause preventing the employee from joining a competitive business falls outside the purview of Section 27 of the Contract Act.

35. Accordingly, in the event it is found that the respondent had left the service of the appellant at the relevant juncture, it cannot be held that Section 27 of the Contract Act is not applicable, in which case Clause 11 would have to be deemed as void.

Whether the employment of the respondent can be deemed to continue till the date of the resignation

36. This issue is inter-linked with the previous one, inasmuch as the position of a post-termination employee and that of an employee in service would be different so far as the restrictive Clause of 27 of the Contract Act is concerned. Even in the judgment cited by the respondent, an employee in service was not held to have the benefit of Section 27. It is also otherwise true, since if an employee is in continuance of service in a particular company, there cannot be any scope for holding that a non-competition clause restrained him from exercising a lawfully profession or trade, since he is already in such

a profession and the restrictive covenant would be no restraint at all.

37. To assess the present issue, the materials placed before the court are to be looked into. The respondent relies on Clause 3 of the employment agreement, which provides that there cannot be any implied confirmation. As far as the purported confirmation letter dated March 1, 2024, is concerned, we cannot but observe, at the *prima facie* stage, that considerable doubt is cast on the said document. Conspicuously, in the pre-suit communication made by the appellant-Company through its advocate to the respondent on October 17, 2025, that is, even after the resignation of the respondent, no whisper of any confirmation found place. Rather, the appellant-Company mentioned two occasions of extension of the letter of appointment (which granted merely probationary rights to the respondent), on March 1, 2024 and March 1, 2025, without any such extension letter of March 1, 2025 having come on record. The said legal notice itself demolishes the case of the appellant that there was a confirmation issued to the respondent on March 1, 2024 since, if such confirmation letter was really in existence, there could not be any conceivable reason why the same would not be referred to in the communication dated October 17, 2025; rather, a diametrically contrary case of extension of the probation period was made out in the said communication.

38. Secondly, the appellant has not denied the extension letter dated March 1, 2024, annexed to the affidavit-in-opposition of the respondent before this Court. A confirmation letter is mutually exclusive with a letter of renewal of the probation period. Hence, in view of the appellant having admitted the existence of the letter dated March 1, 2024 renewing the respondent's probation period, the appellant's case of confirmation of the respondent's service on the self-same date is demolished. There could not be any simultaneous extension of probation and confirmation on the same date, since the two would be mutually destructive.

39. That apart, we cannot brush aside the respondent's argument that although the appointment letter of the respondent, which was supposedly issued unilaterally by the appellant-Company, was signed by both parties, as was the extension letter dated March 1, 2024, the purported confirmation letter dated March 1, 2024 was conspicuously not counter-singed by the respondent.

40. As such, the allegation of confirmation of the respondent in his probationary post is doubtful even on the basis of the case made out by the plaintiff/appellant and the documents relied on by it.

41. However, insofar as the concept of implied contract by conduct is concerned, *Haji Mohammed*[5] *(supra)* and *Paramjeet Singh*[6] *(supra)* are authorities on such proposition. In the former, the Hon'ble

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[5] ***Haji Mohammed Ishaq Wd. S. K. Mohammed and Others v. Mohamad Iqbal and Mohamed Ali and Co.*, reported at *(1978) 2 SCC 493***

[6] ***Paramjeet Singh & another v. The State of M.P. & others, reported at 2016 SCC OnLine MP 870***

Supreme Court quoted 'Chitty on Contracts' (Twenty-third Edition) to observe that express and implied contracts are both contracts in the true sense of the term, for both arise from the agreement of the parties, though in one case, agreement is manifested in words and in the other case by conduct. In *Paramjeet Singh*[7] *(supra),* the Division Bench of the Madhya Pradesh High Court similarly held that a contract of employment can be entered into orally also, and an existence of the contract or its extension can be gathered from the circumstances available on record and by conduct of the parties and implications.

42. In the present case, it has not been disputed that the respondent continued in service even after his last extension expired on February 28, 2024, as per the respondent's own case. In fact, in the respondent's reply dated October 31, 2025 to the pre-suit communication of the appellant dated October 17, 2025, the respondent himself stated that the respondent's continuation in service beyond February 28, 2025 was "purely under coercion and compulsion" exerted by the appellant's Managing Director. Such stand of the respondent is flimsy, since the respondent is a professional and it is *prima facie* not credible that he was compelled to work in the company for about eight(8) months, even after termination of his service. Rather, by the said statement in his

[7] ***Paramjeet Singh & another v. The State of M.P. & others, reported at 2016 SCC OnLine MP 870***

Advocate's letter dated October 31, 2025, the respondent clearly admitted continuation in service beyond February 28, 2025.

43. That apart, the respondent continued to draw salary till the tendering of his resignation in October 2025, which is borne out by the annexures to the affidavit-in-reply filed by the appellant. There is no specific dispute from the end of the respondent to such drawing of salary.

44. Thirdly, by the very fact that on October 8, 2025 the respondent specifically gave a "resignation letter" by way of email, stating therein that his resignation would take effect from the previous day, that is, on October 7, 2025, the respondent clearly admitted that he continued to be in employment of the appellant-Company at least till October 8, 2025.

45. The respondent has sought to mix up the two issues, between continuance in service and confirmation. However, there is a penumbra zone inbetween, being that the respondent could very well continue in probationary employment of the appellant even without being confirmed.

46. As such, from the materials on record, a strong *prima facie* case has been made out by the appellant that till the date of resignation, that is, October 8, 2025, the respondent was in continuous service of the appellant. Thus, the principle laid down in *Haji Mohammed*[8] (*supra)*

[8] ***Haji Mohammed Ishaq Wd. S. K. Mohammed and Others v. Mohamad Iqbal and Mohamed Ali and Co.*, reported at *(1978) 2 SCC 493***

and *Paramjeet Singh*[9] *(supra)* holds good insofar as by his conduct, the respondent established the continuance of his service, in a probationary capacity, if not as a confirmed employee.

Whether the employment of the respondent can be deemed to have continued after the date of his resignation, in view of the termination being invalid

47. Two scenarios of resignation have been contemplated in the employment agreement of the respondent. The first, if the service of the respondent/employee had already been confirmed, in which case, Clause 15.3 would be applicable, and secondly, if he had not been confirmed but continued in the capacity of a probationer, in which eventuality Clause 15 would be applicable.

48. Since we have held *prima facie* that no case of confirmation has been made out, the post-confirmation requirement of one month's notice period, as contemplated in Clause 15.3 of the employment agreement, is not attracted.

49. Therefore, it is only the termination of a probationer employee, as embodied in Clause 15 of the employment contract, which is germane. As per the said provision, the services of such an employee may be terminated by the appellant-Company during the probation period with immediate effect without any notice; however,

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[9] ***Paramjeet Singh & another v. The State of M.P. & others, reported at 2016 SCC OnLine MP 870***

the employee shall have to give a prior written notice of 30 days, although the said Clause is silent as to the context in which such notice is to be given. Even if, applying the principle of *ejusdem generis*, we construe that such notice would be for termination of service at the behest of the employee, reading the said sentence in conjunction with the previous one, we do not find any sanction contemplated within the four corners of the employment agreement for non-compliance of such requirement.

50. As opposed to Clause 15.3, where liquidated damages of Rs. 3,00,000/- is quantified as the penalty for premature resignation post-confirmation without one months' notice, in Clause 15, there is no such penalty imposed in case a written notice of 30 days' is not given. Thus, it cannot be said that the fallout of not giving a notice of 30 days in case of a probationer employee would be to attract any penalty or would *per se* vitiate the termination itself.

51. In such view of the matter, the resignation tendered by the respondent in the capacity of a probationer employee of the appellant-Company could not by itself render the termination invalid. Hence, it cannot be said that the employment of the respondent with the appellant-Company continued after the tendering of his resignation on October 8, 2025.

52. Thus, the rigours of Section 27 of the Contract Act, are clearly applicable in the present case, since the respondent was rendered an *ex*-employee after tendering his resignation on October 8, 2025

(with effect from October 7, 2025), in respect of whom any restrictive clause preventing joining service elsewhere, including the non-competition covenant in Clause 11 of the appointment letter, would have to be *prima facie* construed to be void.

Whether ad interim injunction could be granted in terms of prayer (a) of the temporary injunction application in the Trial Court

53. Prayer (a) of the injunction application seeks to restrain the defendant/respondent from continuing employment with or rendering services to any company or concern or engage in competing business with appellant-Company for a period of two years from the date of cessation of his employment with the appellant-Company and from soliciting or inducing any employee of the plaintiff to leave its service. Thus, there are two components in the said prayer – non-competition and non-solicitation.

54. Insofar as the first component is concerned, the same comes within ambit of the restrictive covenant embodied in Clause 11 (non-competition) of the employment agreement and thus is *prima facie* void under Section 27 of the Contract Act. Thus, the said component of injunction cannot be granted.

55. However, Clause 12, restraining solicitation after leaving service, does not come within the purview of Section 27. By itself, a restraint on the employee, post-termination, from luring away or soliciting

any employee of the company to migrate to some other company does not tantamount to a restraint on the employee from exercising a lawful profession. The legal fiction created by Section 27 of the Contract Act is applicable only to the person whose right to join a lawful profession, trade or business is being restrained by a restrictive covenant. The said legal fiction cannot be doubly extended to take within its ambit a third party, who is not a party to the employment agreement. Thus, the act of solicitation of a different employee than the employee who enters into an agreement with the company does not come within the purview of Section 27. By luring other employees of the employer company to join other competitive businesses, the concerned employee does not exercise his own right to join a lawful profession, trade or business. Hence, there is no legal bar to the restrictive clause of non-solicitation as envisaged in Clause 12 of the employment agreement from being enforced. Hence, there cannot be any legal bar to grant of the second component of prayer (a).

Whether injunction could be granted in terms of prayer (b) of the temporary injunction application

56. Prayer (b) of the injunction application seeks to enforce the confidentiality covenant embodied in Clause 10 and Clause 10.2 of the employment agreement between the parties. Such confidentiality clause is also strengthened by Clauses 2 and 3 of the

Employee Non-Disclosure Agreement dated March 1, 2023 entered into by the respondent contemporaneously with his appointment to the appellant-Company. The said clauses were consciously entered into by the respondent and are not barred under Section 27 of the Indian Contract Act, 1872 or under any other law, for that matter. In fact, the concept of privacy, in the commercial world, can also be extended to a company engaged in a particular business. A company or enterprise engaged in a particular business is definitely entitled to retain its trade secrets and confidential information as well as specialised data, which are an inseparable part of the business. In fact, it is the core business ethics, trade practices and *modus operandi* of a company which form the bulwark of its competitive edge in the market. Thus, the confidentiality clause, read with the non-disclosure undertaking, rightly prevent the respondent from divulging the trade secrets or confidential information of the appellant-Company to a third party, particularly to a competitive business. Hence, the said covenants can definitely be enforced. Consequentially, in the light of Section 42 of the Specific Relief Act, 1963, such negative covenant can also be enforced by an order of injunction.

Whether alternative remedy for damages is a bar to injunction, as held by the learned Trial Judge

57. There are two distinct claims made in the suit. Relief (c) of the plaint claims liquidated damages of Rs. 3,00,000/- on the strength of Clause 15.3 of the employment agreement between the parties, for alleged non-compliance of the mandatory notice period of one month before resignation. Although there is some doubt as to whether the respondent was actually confirmed in his post and, consequentially, whether a post-confirmation scenario is applicable to the respondent at all, fact remains that the plaint claim of damages is restricted to such premature termination at the behest of the plaintiff/respondent only.

58. However, insofar as reliefs (b) and (d) to (g) of the plaint are concerned, those relate to the confidentiality and non-solicitation covenants, as embodied in Clauses 10, 10.2 and 12 as well as employees' non-disclosure agreement between the parties. Hence, the second component of the plaint prayer distinctly relates to a continuing cause of action for enforcement of the said negative covenants in the employment agreement, in aid of which injunction can be sought as per Section 42 of the Specific Relief Act.

59. On the basis of the materials before us, it is clear that the appellant has every right to get an injunction on the said clauses, since the appellant would be in imminent danger of the respondent divulging the appellant's trade secrets, confidential or specialised data and

information to a competitive business, particularly since the respondent has allegedly joined a next-door rival of the appellant.

60. Although the name of Mandira Mahapatra does not feature in the employees' list annexed to the affidavit-in-reply to the appellant, an e-mail dated December 14, 2025 issued by one Sandip Manna, an employee of the appellant-Company, whose name does feature in the employees' list, shows that the said Sandip Manna admitted Mandira Mahapatra to be an HR of the appellant-Company.

61. The appellant has produced a letter written by Mandira Mahapatra to the appellant-company alleging that the respondent is trying to coax her into leaving the appellant to join another company. A letter written by another employee, the said Sandip Manna, to Mandira, seeking to terminate his employment with the appellant-Company soon after the respondent left his job, has also been produced. The veracity of such communications will have to be ascertained at subsequent stages of the injunction application and the suit; however, those communications raise a sufficient *prima facie* apprehension to justify injunction.

62. Thus, a *prima facie* case of there being apprehension of "poaching" on employees has been made out by the appellant, in view of the letter written by Mandira Mahapatra to the appellant indicating that the respondent was attempting to broker away employees of the appellant-Company to a rival company. Hence, the non-solicitation clause also comes into play and there is imminent danger of the

employees of the appellant being lured away from it by the respondent on the basis of the materials before the learned Trial Judge on the date of the impugned order.

63. The loss to be suffered by the appellant due to such apprehended action of the respondent cannot be quantified; hence, the appropriate remedy would not lie in damages but in injunction. In fact, the learned Trial Judge failed to distinguish between the two distinct categories of relief sought by the plaintiff/appellant – damages and injunction – on the strength of separate and different clauses in the employment contract, and mixed up the two to observe in a blanket fashion that the injury to be suffered by the plaintiff/appellant can be compensated by monetary compensation.

CONCLUSION

64. It is to be noted that at the *ex parte ad interim* stage, it is only the averments made in the plaint and the injunction application which are to be looked into. Although there is some leeway before the court taking up an appeal against an *ad interim* refusal or grant of injunction to look into further documents, such scope is available only if a high case of gross suppression of material facts, evident from the records, is made out. The Appellate Court normally cannot enter into a roving enquiry by looking into new documents which were not produced before the learned Trial Judge at the relevant

point of time unless there is gross suppression of the material facts before the Trial Court.

65. We do not find any such high ground of gross suppression having been made out in the present case. The documents sought to be relied on by the respondent for the first time before this Court are required to be placed at the first instance before the Trial Court, either by way of an application under Order XXXIX Rule 4 of the Code of Civil Procedure or by way of a written objection to the temporary injunction application.

66. It is a well-settled principle of law that at the stage of grant of ad interim or temporary injunction, the plaintiff need not prove the plaint case to the hilt. It would be sufficient if a *prima facie* triable issue is raised and an arguable case for trial is made out.

67. Thus, from the discussions above, we find that although the ad interim prayer of injunction restraining the respondent from joining or continuing in service in a different company was rightly refused, at the same time, the other injunctions sought by the plaintiff/appellant ought to have been granted by the learned Trial Judge on the basis of the averments made in the injunction application and the plaint as well as materials produced before the Trial Court by the appellant.

68. The argument of the appellant that the joining of the respondent in a competitive business *per se* is inter-linked with disclosure of the confidential information of the appellant-Company to such rival

cannot be accepted. The respondent, being a marketing executive and having acquired job experience with the appellant in such field for some years, has an obvious expertise in that field alone, which is a specialised sphere of business. Thus, it is obvious that the respondent would seek a similar employment in a different company after leaving the service of the appellant. If a restraint order is passed in that regard, only on the apprehension that such joining of service would automatically imply disclosure of the trade secrets of the appellant, the same would be too high a pedestal for the plaint case to be placed on.

69. Thus, this Court is of the opinion that the joining or continuance of service of the respondent with a rival company of the appellant does not *ipso facto* lead to the inference that the trade secrets of the appellant would be divulged by the respondent.

70. Accordingly, FMAT No.460 of 2025 is partially allowed on contest, thereby modifying the impugned order, bearing Order No.2 dated November 7, 2025 passed by the learned Civil Judge (Senior Division), First Court at Paschim Medinipur in Other Suit No. 39 of 2025, to the effect that the defendant/respondent shall remain restrained by an order of injunction from soliciting or inducing any employee of the plaintiff/appellant-Company to leave its service as well as from using or disclosing any confidential information or trade secrets belonging to the plaintiff/appellant in any manner

whatsoever till disposal of the temporary injunction application by the Trial Court.

71. It is made clear that the above findings have been arrived at only for the purpose of deciding the prayers for injunction at the ad interim stage and will be considered tentative in nature at subsequent stages of the injunction application and the suit, which will be disposed of by the learned Trial Judge independently on their own merits, without being unnecessarily influenced in any manner by the above observations or those made in the impugned order.

72. CAN 1 of 2025 is consequentially disposed of as well.

73. There will be no order as to costs.

74. Urgent certified copies, if applied for, be supplied to the parties upon compliance of due formalities.

(Sabyasachi Bhattacharyya, J.)

I agree.

(Supratim Bhattacharya, J.)