

GAHC010191642023



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : I.A.(Civil)/2540/2023

DELHI PUBLIC SCHOOL AND ANR.
DULIAJAN, P.O.- DULIAJAN- 786602, DIST.- DIBRUGARH, ASSAM.

2: THE PRINCIPAL
DELHI PUBLIC SCHOOL
P.O.- DULIAJAN- 786602
DIST.- DIBRUGARH
ASSAM

VERSUS

BARUAS INDUSTRIES AND 2 ORS.
A REGISTERED PARTNERSHIP FIRM HAVING ITS HEAD OFFICE AND
PRINCIPAL PLACE OF BUSINESS AT TIPLING, P.O.- ZALONI DIBRUDWAR-
786602, P.S.- DULIAJAN, DIST.- DIBRUGARH, ASSAM.

2:GAUTAM KUMAR BARUAH
PARTNER
M/S BARUAS INDUSTRIES
TIPLING
P.O.- ZALONI DIBRUDWAR- 786602
P.S.- DULIAJAN
DIST.-DIBRUGARH
ASSAM.

3:PRITAM BARUAH
PARTNER
M/S BARUAS INDUSTRIES
TIPLING
P.O.- ZALONI DIBRUDWAR- 786602
P.S.- DULIAJAN
DIST.- DIBRUGARH
ASSAM

Advocate for the Petitioner : MR Z MUKIT

Advocate for the Respondent : MS T J SAHEWALLA

Linked Case : FAO/25/2023

BARUAS INDUSTRIES AND 2 ORS.
A REGISTERED PARTNERSHIP FIRM HAVING ITS HEAD OFFICE AND
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P.O.- ZALONI DIBRUDWAR- 786602
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DELHI PUBLIC SCHOOL AND ANR.
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P.O.- DULIAJAN- 786602
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2:THE PRINCIPAL
DELHI PUBLIC SCHOOL
P.O.- DULIAJAN- 786602
DIST.- DIBRUGARH
ASSAM.

Advocate for : MR G N SAHEWALLA
Advocate for : appearing for DELHI PUBLIC SCHOOL AND ANR.

**BEFORE
HONOURABLE MR. JUSTICE KALYAN RAI SURANA**

ORDER

Date : 18-10-2023

Heard Mr. GN Sahewalla, learned senior counsel assisted by Mr. HK Sarma, learned counsel for the appellants. Also heard Mr. Z. Mukit, learned counsel for the respondent nos.1 and 2 as well as Mr. K. Kalita, learned counsel for the respondents and Mr. S. Nath, learned counsel who has entered appearance for the applicant who has filed IA(C) 3118/2023 for impleading him as a respondent in this application.

2. This appeal is preferred under Order XLIII Rule 1(r) CPC against the order dated 12.05.2023 passed by the learned Civil Judge, Dibrugarh in Misc (J) case no.74/2023 in Commercial Suit no.2/2023. By the said order the learned trial Court had issued notice to the respondents-defendants to show-cause. As injunction under Order XXXIX Rule 1 and 2 was not granted, the said order has been assailed in this appeal.

3. On a query of the Court, the learned senior counsel for the appellant as well as learned counsel for the respondents have submitted that the proceedings of Misc. Case (J) case no.74/2023 has not yet proceeded and the hearing in the said injunction application has not yet commenced. The learned counsel for the respondents has submitted that they have entered appearance in the said suit and have filed their show-cause reply. Under such circumstances,

when the adjudication has not been taken up, the Court is of the considered opinion that any observation made by this Court in exercise of appellate jurisdiction, may prejudice either side as they would may deprive of a forum of appeal. Therefore, with the consent of the learned senior counsel for the appellants as well as the respondents, the Court is inclined to close this appeal and relegate the parties to appear before the Court of learned Civil Judge, Dibrugarh with a direction to the learned Civil Judge, Dibrugarh to take a plea of proceedings of Misc. (J) case no.74/2023 as expeditiously as possible without granting any unnecessary adjournment to either side and make an endeavor to dispose of the said application within an outer period of 1(one) month.

4. The learned counsel for the party applying for impleading has submitted that as the applicant was L1 bidder, and Letter of Intent has been issued in their favour and they have purchased the vehicle for which they are required to pay with installments and interest. It has been submitted that the ad-interim injunction which has been passed by this Court in connection with IA(C) 1520/2023 is affecting them.

5. On the basis of the submission made by all sides and considering that this Court is relegating the parties to appear before the learned trial Court for expeditious hearing for the proceedings of Misc.(J) case no.74/2023 and upon considering the stand taken by the appellant as well as respondent nos.1 and 2 in IA(C) 2540/2023 specifically the stand of the appellant that their contract with the respondent nos.1 and 2 was subsisting till 10.01.2025, the Court is inclined to provide that the ad-interim injunction granted by this Court by order dated 02.06.2023 in IA(C) 1520/2023 shall be in force till 02.11.2023.

6. In this connection the learned counsel for the respondent nos.1 and 2 have submitted that they have a valid reason for going ahead with the tendering process as the appellants have participated in the tendering process. Be that as it may, the observations is only indicative of the submission made by the learned counsel for both sides and is not to be construed as an observation of the Court on merit.

7. It is provided that all sides shall appear before the Court of learned Civil Judge (Senior Division), Dibrugarh on 02.11.2023. The appellant herein is granted leave to make a prayer before the said learned Court for passing appropriate orders in Misc.(J) case no.74/2023 and the said learned Court shall, on consideration of the submission of the learned counsel for the appearing parties shall pass ad-interim order on the application for injunction fixing another date for hearing the parties in the show-cause.

8. Alternatively, it is provided that in the event the learned trial Court is inclined to hear the parties on merit it may do so and till the decision is taken it would have the jurisdiction to pass appropriate orders in the said application till the next date of listing.

9. It is also clarified that the said learned Court shall not be influenced by the order of ad-interim injunction granted by this Court on 02.06.2023 and which is extended till the appearance of the parties before the said Court on 02.11.2023 and shall decided the matter in its own merit without being influenced by the order. The applicant in IA(C) 3118/2023 is also relegated to

appear before the learned Civil Judge (Senior Division), Dibrugarh and file an appropriate application which would be considered on its own merit.

JUDGE

Comparing Assistant