

**HIGH COURT OF TRIPURA
AGARTALA**

FAO 2 of 2023

Shri Samir Ghosh

---Appellant(s)

Versus

Shri Swapan Kumar Das and 2 Ors.

---Respondent(s)

For Appellant (s)	:	Mr. S.M. Chakraborty, Sr. Advocate. Mrs. P. Chakraborty, Advocate.
For Respondent(s)	:	Mrs. P. Dhar, Advocate. Mrs. Koushik Datta, Advocate.
Date of hearing and date of judgment and order	:	09.09.2024.
Whether fit for reporting	:	No.

HON'BLE MR. JUSTICE T. AMARNATH GOUD

Judgment & Order (Oral)

Heard learned counsel for the parties.

[2] This is an appeal under Order 43 Rule 1(r) of the Civil Procedure Code, 1908 against the order dated 09.10.2023 passed by the Ld. Civil Judge (Senior Division), Court No.2, West Tripura, Agartala in Civil Misc (Inj) 67 of 2023 arising out of T.S 128 of 2023.

[3] It is the case of the appellant that the plaintiff filed a suit before the Ld. Civil Judge (Senior Division) Court No-1, West Tripura, Agartala against the respondents for declaration with consequential relief of perpetual injunction and realization of money amounting to Rs 23,50,000/- on payment of maximum Court fees. The said suit, on being transferred to the Court of Ld. Civil Judge(Senior Division) Court No-2, West Tripura Agartala was registered as T.S 128 of 2023. Along with the said suit, the appellant filed a separate petition under Order XXXIX Rule 1 and 2 read with Section 94(c) and (e) of the Civil procedure Code, 1908 for granting exparte ad-interim followed by temporary injunction against the respondents herein from changing the nature and character of the suit land for starting any business of petroleum outlet on the said land till disposal of the suit. On transfer the said injunction, petition was heard

by Ld. Civil Judge(Senior Division) Court No-2, West Tripura, Agartala on 07-0-2023 and by an order dated 09-10-2023 the said petition for ad-interim exparte injunction was rejected touching the merit of the suit rendering the impugned order totally unsustainable and bad in the eye of law and directed the appellant to file requisites to issue notice upon the respondents. Hence the appellant has filed the instant appeal before this Court seeking the following relief(s).

- (i) *Pass a decree declaring that after the retirement/withdrawal of the plaintiff from the partnership business namely Om Petroleum Pump' as per the unregistered agreement dated 10-12- 2022 the defendant Nos-1 and 2 cannot change the nature and character of the suit land in which the plaintiff has 50 share, without paying the claimed amounts of the plaintiff.*
- (ii) *Pass decree declaring that the defendant No- 1 is under legal obligation to pay the amount of Rs 23,50,000/- to the plaintiff as per the settlement reflected in the unregistered agreement dated 10- 12-2022.*
- (iii) *Pass decree declaring that the defendant No-2 is under obligation to purchase 50% share of the plaintiff as per the settlement made in the unregistered agreement before execution of any development work in the suit land.*
- (iv) *Pass decree for payment of money amounting to Rs 23,50,000/- by the defendant No-1 to the plaintiff in the light of the settlement contained in the unregistered agreement dated 10-12- 2022.*
- (v) *Pass decree for perpetual injunction restraining the defendant Nos- 1 and 2 to carry out any construction/development work on the suit land before finalization and payment of claimed amounts to the plaintiff and the defendant No-3 from permitting the defendant Nos- 1 and 2 to start any retail business of petroleum on the suit land till such payment.*
- (vi) *Any other appropriate order/orders as this Ld. Court deems fit and proper may kindly be passed.*

[4] The relevant contents of the impugned judgment and order dated 09.10.2023 passed by the learned LA Judge is extracted as under:

"But, on perusal of the said partnership deed, it appears that the said Partnership Deed was made only between the plaintiff-petitioner and the defendant-op no.1 and the term 'partners' mentioned in the condition no-16 of the said Partnership Deed, means the then partners who executed the said partnership deed i.e. the plaintiff- petitioner and the defendant-op no.1. Even if the plaintiff-petitioner has retired from the partnership firm, the condition 16 of that Partnership Deed dated 08/11/2019 binding upon both the parties and the said deed is still in force. Partnership deed once done, is guided by the Indian Partnership Act, even if not registered. There is also provision for dissolving firm, but they did not dissolve the firm. Here, the partnership firm is only reconstituted and its earlier name has been changed. Earlier firm was not dissolved. This means the arbitration clause is still in force and all terms of that deed are applicable upon the partners of that Deed who executed it and this suit has also resulted from "dealings or any matter relating to or concerning to partnership business." Moreover, as per the Indian Partnership Act, 1932 no suit lies in a Civil Court to enforce a right arising out of a

contract unless the firm is registered in the Register of Firms, out not applicable for arbitration.

Hence, considering the materials on record and the submission of the plaintiff-petitioner side, I do not find that the plaintiff-petitioner has a prima facie case to file a suit in the Civil Court.

Considering thus, no ex-parte id- interim injunction order is passed in absence of defendant-ops. Hence, in the light of the above discussion, I am of the opinion that ex-parte interim injunction in absence of defendant-ops cannot be passed under the prevailing circumstances of this case.

As such the prayer for passing an ex- parte ad-interim injunction is hereby rejected.”

[5] It is contended by the counsel for the appellant that while passing the impugned order, the learned Court below has committed gross jurisdictional error while touching the merit of the case at the stage 1 of hearing of the injunction petition, when there was no controversy to the said statements before the Ld. Court below. The reference to the Partnership Act and the provisions of Arbitration and Conciliation Act was totally uncalled for at the stage of the case, when there was clear statement in the plaint as well as in the injunction petition as to why the provisions of the said Act are not applicable in the case of the appellant and there was no lawful approach by filing any Caveat from other side with reference to the said aspects of the law. Hence, the Ld. Court below totally exceeded its jurisdiction while rejecting the prayer for exparte injunction causing serious prejudice to the appellant.

[6] On the other hand, learned counsel appearing for the respondents have apprised this court that the impugned order is just and proper and needs no interference from this court.

[7] Heard and perused the evidence on record.

[8] After perusing the record, this court is of the opinion that the impugned order passed on 09.10.2023 was without giving sufficient opportunity to the both sides. Therefore, it is a fit case for remanding back the matter. The court below shall give a reasonable opportunity to both sides and decide the matter without referring the order dated 09.10.2023 passed in Civil Misc(Inj) 67 of 2023 arising out of T.S 128 of 2023.

Mere order of rejection indicates that the learned court below has expressed its opinion on Civil Misc (Inj) 67 of 2023 arising out of T.S 128 of 2023 which is purely at premature stage. Meanwhile, in course of the argument, it is indicated by the counsel appearing for the parties that the next date of hearing before the learned court below is on 09.12.2024. The learned Court below shall after providing adequate opportunity to both sides decided the matter as expeditiously as possible. The appellant is at liberty to avail remedies before the court below, if so advised.

[9] In view of the above discussion, the impugned Award dated 09.10.2023 is set aside and this Court remands back the matter to the Court below for deciding the same after providing adequate opportunity to both the parties.

[10] With the above observation and direction, the appeal is disposed of. As a sequel, stay, if any, stands vacated. Pending application(s), if any, also stands closed.

JUDGE

Dipak

