

08.02.2021  
KC(2)

F.M.A.T. 101 of 2021  
Namrata Bhandari and Anr.  
-versus-  
Madhu Bhandari and Anr.  
With  
CAN 1 of 2021

(Via Video Conference)

Mr. Abhrajit Mitra, Sr. Advocate,  
Mr. J. Chowdhury,  
Mr. S. Ghosh,  
Mr. B. Kumar,  
Mr. D. Sen.....For the appellants.

Mr. Jishnu Saha, Sr. Advocate,  
Mr. Sukrit Mukherjee,  
Mr. S.K. Kakrania,  
Mr. Sanjeeb Seni,  
Mr. Tanuj Kakrania,  
Mr. Aviroop Mitra.....For the respondents.

Leave granted to the appellants to correct the memorandum of appeal.

In a section 9 application under the Arbitration and Conciliation Act, 1996, during pendency of a section 34 application to set aside the award, made by the respondents herein before the learned District Judge, Alipore, on 27<sup>th</sup> January, 2021 the court recorded that it heard submissions of learned counsel for the parties and directed that the application would be taken up again on 9<sup>th</sup> February, 2021.

Mr. Abhrajit Mitra, learned senior advocate appearing for the appellants submits that his clients'

prayer for an interim order was not considered by the learned judge.

At this stage, we do not want to elaborate on the disputes between the parties. We only say that the first and second appellants are the daughter and son of the deceased Anil Kumar Bhandari. The first respondent is his widow and the second respondent is his other daughter.

By and under the award dated 26<sup>th</sup> September, 2020 which is under challenge by the respondents in the Court below, the learned arbitrator has, inter alia, set out in schedules which run from pages 112 onwards of the stay petition, a description of the entire assets of the deceased, which include both immovable and movable properties.

The movables include shares and mutual funds. These assets are part of the subject matter of dispute in the section 34 application. We are not concerned with that dispute in this application.

We only have to deal with the allegation of Mr. Mitra that the immovable properties are earning a sizable amount of rent and this rent is being entirely appropriated by the first and second respondents, the clients of Mr. Jishnu Saha, learned senior advocate.

Mr. Saha shows us an agreement between the parties dated 9<sup>th</sup> September, 2017. He submits that by virtue of it, the proprietorship firm of which the

respondent no. 1 is the proprietress, is entitled to collect the entire rent.

Having heard learned counsel for the parties, we are of the view that it should be left to the learned District Judge to consider the prayer for grant of an interim order.

However, on the basis of the submissions made before us we direct that the respondents shall prepare a statement of the properties, shares, stock, mutual funds etc. of which the deceased was the recorded legal owner and the income arising therefrom. The respondents shall also prepare another statement of the other properties from the list of properties mentioned above from which the first and second respondents are collecting rent, interest, dividend etc. and to what extent. The statement should cover the period from the death of Anil Kumar Bhandari on 13<sup>th</sup> February, 2016.

At this point of time we record the submission of Mr. Saha that as far as the second set of properties is concerned, the first respondent is the recorded legal owner and the deceased had no legal or beneficial interest in the same. Hence, the appellants have no claim to any accruals therefrom.

The above statements shall be presented as an annexure to an affidavit to be filed before the learned District Judge who shall deal with the interim application in accordance with law. On the basis of this

order it shall be open to the court below to adjourn the proceedings tomorrow (9<sup>th</sup> February, 2021), to an earliest future date.

Mr. Saha assures this Court that till the matter is considered by the learned District Judge, his clients will not deal with the properties in such a way so that the application of Mr. Mitra is rendered infructuous or prejudice is caused to his clients.

The appeal and the connected application, after dispensing with all formalities, are disposed of.

(I.P. MUKERJI, J.)

(SUBHASIS DASGUPTA, J.)