

07.04.2021
SL No.3
Court No.17
(gc)

**FMAT 166 of 2021
With
CAN 1 of 2021**

**Amit Kumar Ghidia & Ors.
Vs.
Eva Exotica Pvt. Ltd.**

(Via Video Conference)

Mr. Vipul Kundalia,
Mr. Soumabha Ghosh,
Ms. Sonal Shah,
Mr. Kushagra Shah,
...for the Appellants.
Mr. Sarvapriya Mukherjee,
Mr. Rajashree Kajaria,
Mr. Saptarshi Mukherjee,
...for the Respondent.

By consent of the parties, the appeal and the application are taken up together and disposed of by this common order.

The appeal is arising out of an order dated 15th December, 2020 passed by the learned Civil Judge (Senior Division), 1st Court at Barasat in connection with an application for injunction in which the plaintiff has amongst others prayed for an injunction restraining the present appellants from interfering with the trade secrets of the plaintiff company.

The learned Counsel appearing on behalf of the appellants submits that the appellants are not carrying any business in competition with the plaintiff/respondent. The manufacturing process for poultry feeds and cattle feeds is common and no special knowledge could be attributed to

any of such manufacturing process or technical know-how. In any event, it is contended that the appellants are not interfering with the trade secrets of the plaintiff-company. Moreover, our attention has been drawn to the fact that the plaintiff in the injunction application has referred to seven customers as their loyal customers and the order cannot travel beyond the said list of loyal customers.

Mr. Sarvapriya Mukherjee, learned Counsel appearing on behalf of the plaintiff/respondent has submitted that for the purpose of setting up the business, the plaintiff has expended substantial amount for establishing plants and manufacturing units. The plants and manufacturing units of the plaintiff are all state of the art and equipped with modern machinery and use latest technical know-how, most of which have been developed in house. It is submitted that the requirement of every customer has been customised and this is within the special knowledge of the respondent.

It is not being disputed at the bar that the appellant No.1 was an erstwhile director of the plaintiff-company and he had tendered his resignation which, however, has not been accepted by the plaintiff-company. Insofar as the appellant No.1 is concerned, the resignation is complete as soon as it is sent to the plaintiff and insofar as he is concerned, it does not depend upon its acceptance by the plaintiff as the plaintiff cannot unreasonably withhold such resignation, although the plaintiff may have remedy against him for breach of fiduciary duty. Irrespective of the fact that

whether the appellant No.1 has resigned or not from the plaintiff, the appellant No.1 owes a fiduciary duty to the plaintiff for not carrying on business by using technical know-how and informations gathered over a period of time. The appellant No.1 appears to be one of the promoters/directors and by reason of the length of time that he was associated with the plaintiff, it cannot be denied or disputed that he had acquired special knowledge about the function of the plaintiff-company and had all the inside information as he was actively involved in the business of the plaintiff- company. The plaintiff is a closely held company.

The learned Trial Judge, in our view, at the ex-parte at-interim stage had taken into consideration the relevant facts that ought to have been taken before exercising his discretion in favour of the plaintiff and in considering the appeal from such an order, we would put ourselves in the same position as the learned Trial Judge had put himself while considering the prayer for ex-parte ad-interim order. In view of conspectus of facts noticed and noted, we are of the firm opinion that the learned Trial Judge had exercised his discretion in a judicious manner. If the appellants are not using the trade secrets or procuring a breach of contract of the plaintiff by soliciting the loyal customers of the plaintiff, then the appellants have nothing to fear about and we do not see that the order impugned has made inroads to

such fields or areas where such trade secrets have not been used/utilised.

We feel that the injunction application should be disposed of at the earliest. The appellants shall file their affidavit-in-opposition to the injunction application within three weeks from date. Reply thereto, if any, be filed within two weeks thereafter. The learned Trial Judge is requested to dispose of the injunction application uninfluenced by our observation preferably within three months from the date of completion of affidavits subject to the convenience of the learned Court below and shall not grant any unnecessary adjournment to either of the parties.

With the aforesaid observation, the appeal being FMAT 166 of 2021 and the stay application being CAN 1 of 2021 stand disposed of.

Urgent Photostat certified copy of this order, if applied for, be given to the parties on usual undertaking.

(Kausik Chanda, J.)

(Soumen Sen, J.)