

27.04.2021

AD 6

Ct.No. 03

Amalranjan

(Via Video Conference)

**IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE**

FMAT 332 of 2021

With

IA No: CAN 1 of 2021

Mrs. Sanghamitra Bose & Ors.

Vs.

Sri Swapan Kumar Ray & Anr.

Mr. Mainak Bose
Mr. Anurag Bagaria
Mr. Ankur Jain

... for the appellants

Mr. Aniruddha Chatterjee
Mr. Abhisek Baran Das

...for the respondents

Re: IA No: CAN 1 of 2021

We have heard out the appeal itself today
dispensing with all formalities.

This is an appeal against a judgment and
order dated 13th April, 2021 made ex parte by
the learned court below concerning the affairs of
the partnership firm, to the following effect:

“The respondent nos. 2 and 3 are hereby
restrained from operating bank account or
creating any third party interest or induct
any one as partner in the firm and also
restrained from transferring, alienating or

creating rights in favour of third party in respect of partnership assets and properties of the firm, both movable and immovable as described in the schedule of properties till 12.05.2021.

Issue notice upon the respondents asking them to show cause by **12.05.2021** as to why the application for ad-interim injunction shall not be granted in favour of the petitioners.

The petitioners are directed to put requisites at once.

The petitioners shall comply with the provision u/o 39 rule 3(a) and (b) of Civil Procedure Code.

Fix 12.05.2021 for S/R of notice, appearance of the respondents and for passing further order.”

The problem with this order is that the application has been made returnable before the court below one month after the ex parte order. The correct procedure ought to have been to make it returnable much earlier to give the respondents/appellants before us an

opportunity of hearing before the court below so as to contest the matter.

The bone of contention between the parties appears to be whether upon the death of Mr. Chatterjee's clients' mother, the partnership was reconstituted with the surviving partners? Or whether Mr. Chatterjee's clients had the right under the partnership deed to enter the partnership and do business along with the surviving partners?

Mr. Bose's clients, who are managing the firm now, are aggrieved by this order.

Mr. Bose submits that by this order, the business of the firm has come to us standstill. The effect of this order would be similar to the effect of dissolution of a firm.

Considering the above submissions, we remit this matter back to the court below with a direction that the returnable date of the application should be suitably brought forward, so that the application is heard out within seven days of communication of this order before the court below.

We modify the interim order only to the extent that Mr. Bose's clients will be allowed to carry on the business including operation of its

bank accounts in the usual course of business only and shall not create any encumbrance or third party interest or deal with the other assets of the firm particularly the term deposits without the leave of the court below.

All points including the point of maintainability based on the submissions that the dispute is not commercial is kept open before the court below.

We make it clear that it may on consideration of the case, pass any order which may be contrary to or in variance with this order.

The appeal and the connected application are disposed of.

(I. P. Mukerji,J.)

(Md. Nizamuddin,J.)