

04.08.2021

Sl. 1
Ct.No. 03
Amalranjan

(Via Video Conference)

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

(COMMERCIAL DIVISION)

FMAT 452 of 2021

**Amoorith Pipes and Tubes Private Limited & Anr.
Vs.**

Agroshine Food Products Private Limited & Ors.

**With
CAN No. 1 of 2021**

Mr. Ahin Choudhury, sr. adv.
Mr. S.N. Mookherjee, Sr. Adv.
Mr. Dhruba Ghosh, sr. adv.
Mr. Rohit Banerjee
Mr. Suryaneel Das
Mr. Aditya Mondal

... for the appellants

Mr. Ratnanko Banerjee, sr. adv.
Mr. Jishnu Chowdhury
Mr. Aniruddha Mitra
Mr. Deepak Kripalani

...for the respondent no. 1

Ms. Sudipa Bhattacharya

...for the respondent no. 2

Mr. Shreyash Mohta

...for the respondent no. 3

Mr. Krishnaraj Thaker
Mr. Vikram Wadehra
Ms. Vidusi Chokhani
Mr. Soumava Ghosh

...for the respondent no. 4

Re: CAN No. 1 of 2021 (stay)

After dispensing with all formalities, we dispose of this appeal and the connected stay application by this order.

This is an appeal from an ex parte ad-interim order dated 17th June, 2021 passed by the learned judge, Commercial Court at Rajarhat, North 24 Parganas refusing the order of injunction as prayed for in the interim application.

The facts simply and shortly stated are that the appellants and the respondent nos. 1, 2 and 3 entered into an arrangement whereunder the appellants would make payment of a sum in the region of Rs. 5 crores to these respondents so as to meet their liabilities which included their liability with the respondent no. 4. Pegasus Assets Reconstruction Private Limited. Pegasus is said to be their secured creditor.

Mr. Ahin Choudhury, learned senior advocate appearing for the appellants submits that in furtherance of this agreement, a sum of Rs. 2.06 crores has already been paid to the appellants directly and that his clients are in a

position to make over a bank draft of Rs. 2.05 crores to Pegasus.

Mr. Choudhury also says that in implementation of the agreement, his clients are in possession of the subject property and that an interim order is warranted, restraining the respondents from dispossessing the appellants from it, pending trial of the suit.

Mr. Ratnanko Banerjee, learned senior advocate appearing for the respondent no. 1 submits that only Rs. 1.94 crores and odd have been paid. He also contends that the timeline for making the payments has long expired. Specific performance of the agreement cannot be claimed at this point of time or ever.

On scrutiny of the impugned order, we find that it was made ex parte on 17th June, 2021. Further consideration of the interim application would be made by the learned court below upon notice to the respondents.

We are of the view, that this interim application, at the motion stage, keeping all points open should be heard out as expeditiously as possible by the learned court below.

We notice that Pegasus, the respondent no. 4, is not a party to the arrangement between the

appellants and the other respondents. We are not aware of the right of the respondent no. 4 as against the other respondents.

Taking into account the fact that admittedly the appellants have paid Rs. 1.94 crores to the said respondents, we only restrain the respondent nos. 1, 2 and 3 from taking any steps for dispossessing the appellants from the subject property for a period of 4 weeks from date, i.e., till 3rd September 2021.

We make it absolutely clear that this injunction on the said respondents will not in any way affect the right of the respondent no. 4 or any other third party.

Furthermore, if to give effect any right of a third party, the respondent nos. 1, 2 and 3 are required to transfer or deal with or part with possession of the said property, that right is also not affected by this order.

This order will only bind the appellants and the respondent nos. 1, 2 and 3 against one another.

The learned court below will not be influenced by any observations made by us while dealing with the interim application before it. It

is free to extend, vary or discontinue this limited interim order.

The appeal and the connected application are disposed of.

(I. P. Mukerji,J.)

(Aniruddha Roy,J.)